RECORD, CASE No. 15,211.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1241.

GEORGE A. PETTIBONE, JOHN MURPHY, MICHAEL L. DEVINE, AND C. SINCLAIR, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

FILED NOVEMBER 23, 1892.

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1 In the Supreme Court of the United States.

THE UNITED STATES, Defendant in Error,
vs.
PETER BREEN *et al.*, Plaintiff- in Error. } No. —. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States for the district of Idaho, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before the Honorable James H. Beatty, district judge, between The United States, plaintiff and def't in error, and Geo. A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, defendants and plaintiffs in error, a manifest error hath happened, to the great damage of the said plaintiffs in error, as by complaint doth appear, and we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October, A. D. eighteen hundred and ninety-three, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Seal United State District Court, Idaho.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this November 14th, 1892.

A. L. RICHARDSON,
Clerk of the District Court of the United States for the District of Idaho.

1¼ [Endorsed:] In the Supreme Court of the United States. The United States, def't in error, *vs.* Peter Breen *et al.*, plaintiff- in error. Writ of error. Filed ——, 189–. —— ——, clerk, by —— ——, deputy clerk.

Service of the within writ of error, by copy, admitted this 14th day of November, 1892.

FREMONT WOOD,
U. S. Attorney for Idaho.

1½ In the District Court of the United States within and for the Northern Division of the District of Idaho. Special Term.

THE UNITED STATES

vs.

PETER BREEN, CAMPBELL, W. BUSHNELL, THOMAS O'BRIEN, GEORGE A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Morris Everett, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick, Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stinson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte, Jack Wallace, J. A. Walker, A. D. Walker, Thomas Whalen, Defendants.

2 Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Morris Everett, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stinson, Ben. Snyder, Joseph Trainor, Richard Thomas, John

Van Dorn, August Vondotte, Jack Wallace, J. A. Walker, A. D.
3 Walker, Thomas Whalen are accused by the grand jury of the United States within and for the northern division of the district of Idaho, sitting in special term at Coeur d'Alene city, in said northern division, said grand jury having been first duly summoned, sworn, and empaneled upon their oaths by this indictment of the crime of conspiracy, committed as follows, to wit:

That on the 28th day of May, 1892, suit was commenced in the United States circuit court of the district of Idaho, wherein The Bunker Hill and Sullivan Mining and Concentrating Company, a corporation, was complainant, and The Miners' Union of Wardner and others were defendants; that thereafter, on the said 28th day of May, 1892, a writ of injunction was duly and regularly issued out of the said United States circuit court in said above-mentioned suit and directed, among others, to the defendants last above named, whereby the said defendants and each of them, their aiders, abettors, attorneys, officers, agents, servants, members, and associates were restrained from committing or performing any of the acts mentioned and enumerated in the said writ of injunction; which said writ of injunction was in words following:

4 In the Circuit Court of the United States for the Ninth Judicial Circuit in and for the District of Idaho.

THE BUNKER HILL AND SULLIVAN MINING AND CONCENTRATING COMPANY, a Corporation, Complainant,

versus

THE MINERS' UNION OF WARDNER, IDAHO; THE MINERS' UNION OF Gem, Idaho; the Miners' Union of Mullan, Idaho; the Miners' Union of Burke, Idaho; the Central Miners' Union of Shoshone county, and C. L. Allison, recording secretary of the Miners' Union of Gem; Charles Anderson, John Anderson, Charles Anderson, trustee of the Miners' Union of Gem; John Barry, H. Burrin, Owen Boyer, Joe Boyer, John Basherville, Dick Burkingham, William Brown, H. Black, A. C. Brooking, W. Black, Ed. Burns, Richard Babb, John Benning, John Caddon, Edward Curtin, David Corrigan, Frank Clement, Mike Cyre, John Coddigan, Daniel Coddigan, Charles Coulsen, Daniel Connors, financial committeeman of Gem; Con Cosgrove, Daniel Crowley, John Connors, Thomas Cosgrove, D. Catgnio, James Cronin, P. Crowley, John Clark, Frank Callun, Fred. Cinneral, A. H. Campbell, Thomas Doyle, John Doe Dean, Jerry Delaney, John Dolan, L. Devins, Robert Dowson, R. Dinnigan, Mike Devine, M. Day, Frank Doyle, Louis Dolls, Thomas Dodd, Patrick Day, William Demovillm, C. Dorstron, John Day, Ben. Dudley, John Dumphrey, Sam. Draffin, Thomas Eaton, vice-president of the Miners' Union of Gem; Thomas Eaton, delegate Central Union from Gem; John Evans, Pattie Egan, William Erks, Fred. Eugene, John Doe Flaherty, recording secretary of the Burke Miners' Union; George Feltz, Patrick Fogarty, recording secretary of Burke Union; F. Filley, Amos Felore, Andy Flod-

stron, Frank Franks, Charles Flinn, E. Forceman, Mike Fair, Frank Falley, George Feltz, Thomas Fergurson, William Fallentine, Lew. Fourdstron, William Flinn, John Fitzgerald, G. M. Glover, financial secretary of Burke Union; Frank Goffrey, M. Galligher, Jerry Gilbert, Martin Galligher, B. Gueat, James Galligher, William Gordon, D. Gaugin, Frank Gaffeney, Aug. Gerhardus, F. Gerard, Joe Gillis, William Gibbeons, F. Groche, F. Gauthier, John Gullitta, Oliver Hughes, president of the Miners' Union of Gem; Michael Howard, John Haton, Frank Howard, Henry Hicks, William Hines, Thomas Hughes, H. Hamilton, John Hunt, S. M. Hubbard, Thomas Hughes, Jr., Thomas Henry, John Hathaway, Richard Handy, John Hays, John Haley, David Hudson, P. Ivers, P. Ivison, J. Ivison, Gus Johnson, financial committeeman of Gem Union; M. Johnson, Wm. Johnson, Sam. Kellum, delegate Central Union from Gem; Elmo Kellum, delegate to the Central Union from Gem; Ainsley Kerr, M. T. Kenner, Amos Kellum, John Kaufman, Pat. Kennedy, treasurer of the Miners' Union of Burke; Amos Kelmer, Samuel Kelmer, Chas. Keeley, J. Krulac, Archy Kerr, Milton Kelmer, Elmo Kellum, conductor of the Miners' Union of Gem; Joe Lindsey, financial secretary of the Miners' Union of Gem; Joe Love, trustee of the Gem Union; Harry Lupton, John Lyons, R. Lane, Jacob Lauff, W. H. Luddy, secretary of the Central Union; A. Larsen, James Lawler, Richard Lane, Joe Lafeeroglen, John Lafeeroglen, James McCloskey, Daniel Martin, W. J. Morris, John Murphy, W. T. Miller, John Martin, Francis Murphy, James McDonnell, Maurice McMann, John Mickellet, Thomas Murphy, H. Malone, Jerry Mahoney, James McClune, Hugh McFadden, Martin McDonald, Thomas McGoldrich, David Morrison, William McBrice, John Morgan, John McKee, John McDermont, John Doe Manyson, John Nordquist, treasurer of the Miners' Union of Gem; John Doe Nicholas, vice-president of the Miners' Union of Burke; William Nickols, Nels Neilson, Billy Nichols, Thomas F. Nordman, J. Nichols, vice-president of the Miners' Union of Burke; G. H. Nichols, Charles Norsman, H. Nash, Thomas O'Brien, delegate to the Central Union from Mullan; Edward O'Donnell, J. D. O'Brien, Thomas O'Brien, president of the Miners' Union of Wardner; John Peterson, warden of the Miners' Union of Gem; J. F. Poynton, delegate to the Central Union from Burke; John Doe Pursell, delegate to the Central Miners' Union from Mullan; George Pettibone, John Doe Powers, Robert Porter, Frank Pierce, John Passmore, Joe Poynton, secretary of the central committee; G. S. Peterson, H. Prisk, P. A. Pettibol, John Peterson, Pat. Rafter, Wm. Ryan, Ben. Roe, E. S. Roth, Chas. Rogers, G. R. Ritter, Wm. Roberts, Thos. C. Reed, George Smith, corresponding secretary of the Miners' Union at Gem; Dolph Sunderberge, trustee of the Gem Miners' Union; P. H. Sweeney, delegate to the Central Union from Burke; J. W. Sweeney, delegate to the Central Union from Wardner; Quin Sullivan, delegate to the Central Union from Wardner; John Shovelin, Dan. Shovelin, C. D. Shadrick, M. Shehen, M. Sears, James Sullivan,

delegate to the Central Union from Wardner; Ed. Skelly, Mike Shehan, John Shanahan, A. Shaggerhallen, G. R. Smith, A. Scoville, A. T. Somburg, Wm. Sharp, Myrta Sullivan, Con Shea, Denny Sullivan, C. Stevenson, Richard Thomas, trustee of the Miners' Union of Gem; John Tobin, president of the Miners' Union of Burke; John Triggs, John Thierault, T. Tilley, Charles Toole, Thomas Talentine, John Truscott, Thomas Toomy, J. J. Tobin, John Tierman, Thomas Thomas, Richard Thomas, Amos Treloar, John Doe Valle, T. Valley, Lee Ward, financial committeeman of Gem; Perry Waldron, Al. Williams, Thomas Welsh, Alf. Williams, treasurer of Wardner Miners' Union; George Wigan, James Welch, Rob't Williams, Clarence White, Ed. Word, John Farrell, Joe Trainor, Tom Pendergras, Tom Brown, and numerous others whose names and residences are unknown, Defendants.

Upon reading and filing the bill in the above-entitled cause and the affidavits of T. H. Simmons, Annie E. Simmons, and hearing Messrs. Heyburn and Hagan, solicitors for and of counsel for the complainant, it is ordered that the above-named defendants do appear before this court, at the United States court-room, in Boisé City, in said district, on the 30th day of June, 1892, at 10 o'clock a. m. of said day, if it be a court day, or else on the court day next following, at 10 o'clock a. m. of said day, then and there to show cause, if any, why a provisional injunction should not issue herein according to the prayer of the bill in that behalf.

And it is further ordered that upon the complainant giving or cause to be given to the defendants a bond, with sureties, in the sum of two thousand dollars, to be approved by the clerk of this court, conditioned to pay the said defendants whatsoever damages and losses, not exceeding the sum of two thousand dollars, that they may sustain by reason of this order if the same be wrongful or without sufficient cause.

In the meantime and until the further order of this court herein, the said defendants and each of them, their aiders, attorneys, officers, agents, servants and employees, be, and they are hereby, severally restrained and enjoined from in any manner interfering with the complainant herein in any of its work in and upon or about its said mining claims, to wit, the Bunker Hill, the Sullivan, and the Small Hopes Lode mining claims mentioned in the complaint herein, or in any part thereof, and from in any manner by force or threats or otherwise making any attempts to intimidate any employee of the complainant herein, or from attempting to prevent by any force or intimidation any employee of the said complainant from proceeding to work for the said complainant in a peaceful, quiet, and lawful manner in and upon any part of the aforesaid mines or mining claims, or in or upon any works of the said complainant therein or thereabouts or at all, and that they, the said parties aforesaid, be, and they are hereby, further enjoined from intimidating or threatening or by any force, threats, or any intimidation trying to prevent any employee of the complainant herein from working in or upon the aforesaid mines mentioned in the complaint

herein, or at the mills of complainant, or in or upon any mining or other property of complainant, or from preventing any one from entering the service of the complainant herein, or in any unlawful manner interfering with the business of said complainant in employing persons to work upon its said property, or from going upon any part of the said complainant's property without permission from the complainant or its agents or employees so to do, or in any manner entering upon the works of the complainant, or within the buildings of the complainant, without its consent or the consent of its managers, agents, or employees, and reference is hereby had to the bill of complaint herein, to which your attention is hereby directed, until the further order of this court or the judge thereof; and the foregoing restraining order is also directed against the agents, servants, aiders, abettors, members, and associates of the defendants or either of them.

JAS. H. BEATTY,
Judge of said Court.

Attest: A. L. RICHARDSON,
Clerk of said Court, with the Seal Thereof.

UNITED STATES OF AMERICA, }
District of Idaho, } ss:

I, A. L. Richardson, clerk of the circuit court of the United States for the ninth judicial circuit, in and for the district of Idaho, do hereby certify that the foregoing is a full, true, and correct copy of the restraining order and temporary injunction issued and filed with me the 28th day of May, 1892, and as the same now appears on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Boisé City, Idaho, this the 28th day of May, 1892.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON,
Clerk of said Court.

5 That thereafter, on the 11th day of July, 1892, and while the said writ of injunction was in full force and effect, the said Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Morris Everett, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harry Langjord, W.

H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stinson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte, Jack Wallace, J. A. Walker, A. D. Walker, Thomas Whalen, at Shoshone county, within the northern division of the district of Idaho aforesaid, did unlawfully, corruptly, fraudulently, and feloniously conspire, combine, confederate, and agree together to commit an offense against the United States as follows, to wit:

6 They, the said Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Morris Everett, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, whose true name is unknown to the grand jurors; Thomas Doyle, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stinson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte, Jack Wallace, J. A. Walker,

7 A. D. Walker, Thomas Whalen, did then and there, at the aforesaid Shoshone county and while said writ of injunction issued as aforesaid out of the said United States circuit court was in full force and effect and while said suit in which said writ of injunction was issued was still pending and undetermined in said United States circuit court, unlawfully, corruptly, fraudulently, and feloniously conspire, combine, confederate, and agree together to intimidate, by force and threats of violence, the employees of the said Bunker Hill and Sullivan Mining and Concentrating Company, then working in and upon the mines of the said company and within and around the mill and other buildings of the said company in said Shoshone county, said mines, mill, and other buildings of said company being then and there the mines, mill, and other buildings mentioned and described in said writ of injunction, with

the intent then and there and thereby on the part of the said
8 Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Morris Everett, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stinson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte, Jack Wallace, J. A. Walker, A. D. Walker, Thomas Whalen to compel the employees of the said Bunker Hill and Sullivan Mining and Concentrating Company to abandon their work in and upon the mines, mill, and other buildings of the said mining company last mentioned.

9 And the said Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Morris Everett, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neil, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stimson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte, Jack Wallace, J. A. Walker, A. D. Walker,
10 Thomas Whalen did then and there further unlawfully, fraudulently, corruptly, and feloniously conspire, combine,

confederate, and agree together to intimidate, by force and threats of violence, the officers and agents of the said Bunker Hill and Sullivan Mining and Concentrating Company, with the intent then and there and thereby, by means of said force and threats of violence, to compel the officers and agents of said mining company to discharge and dismiss from the employ of the said mining company all employees (other than such persons as were members of what is called the Miners' Union) who were working either upon or within the mines of the said company and in the said company's mill and other buildings, which said last-mentioned mines, mill, and other buildings are the mines, mill, and other buildings mentioned and described in the aforesaid writ of injunction issued out of the said United States circuit court.

That thereafter, on the 12th day of July, 1892, at Shoshone county, in the State of Idaho, in the aforesaid northern division of the district of Idaho, and while said writ of injunction was in full force and effect and while said suit in which said writ of injunction was issued was still pending and undetermined in the aforesaid
11 United States circuit court, the said Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Morris Everett, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stimson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte,
12 Jack Wallace, J. A. Walker, A. D. Walker, Thomas Whalen, in aid of and in furtherance of and for the purpose of effecting the object of the said unlawful and malicious combination and conspiracy formed and entered into as aforesaid and for the purpose and object aforesaid, did on the said 12th day of July, 1892, at the county and State aforesaid, unlawfully, fraudulently, corruptly, wilfully, and feloniously, by force and violence and threats of violence, intimidate and compel the employees of the said Bunker Hill and Sullivan Mining and Concentrating Company, then and there working in and upon the mines of the said company and within and around the mill, property, and other buildings, all the property of said company, to cease

and abandon work in and upon the mines and within and around the mill, property, and other buildings of said company, said mines, mill, and other buildings of said company being then and there the same mines, mill, property, and buildings mentioned and described in said writ of injunction and said employees being then and there in the employ of said company, and did then and there unlawfully, corruptly, fraudulently, wilfully, and feloniously compel and force the said employees, by the intimidation and violence and threats of violence aforesaid, to abandon and leave and cease their said employment under said company and their work in and upon the mines, mill, and other buildings of the said mining company last mentioned.

13 And they, the said Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred. T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Morris Everett, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stimson, Ben. Snyder, Joseph Trainor, Richard Thomas, John Van Dorn, August Vondotte, Jack Wallace, J. A. Walker, A.

14 D. Walker, Thomas Whalen, did then and there, on said 12th day of July, 1892, further unlawfully, fraudulently, feloniously, wilfully, and corruptly, by intimidation and violence and threats of force and violence, intimidate and compel, by such force and violence and threats of violence, the officers and agents of said Bunker Hill and Sullivan Mining and Concentrating Company, against their will and consent, to discharge and dismiss from its service and from its employment all the employees aforesaid of said company (other than such persons as were members of what is called the Miners' Union) who were working then and there upon and within the aforesaid mines, mill, and other buildings of said Bunker Hill and Sullivan Mining and Concentrating Company and in its employment.

And so the grand jurors aforesaid, upon their oaths afore-

15 said, do charge and say that the said Peter Breen, Campbell W. Bushnell, Thomas O'Brien, George A. Pettibone, Thomas Heeney, John Doe Purcell, whose Christian name is unknown to

the grand jurors; Joseph F. Poynton, William Black, William Boyle, Edward Boyce, Jerry Collins, D. Cosgriff, M. Conway, W. Cross, B. F. Cross, Daniel Campbell, Joseph Davis, Fred T. Dean, Michael Devine, Patrick Denner, John Doe, whose true name is unknown to the grand jurors; Thomas Doyle, Morris Everett, Jake Faller, Theo. Faust, Thomas Fitzquinn, Daniel Finlanson, Patrick Flynn, W. H. Frazer, Joseph Gillis, J. W. Glass, John Gibbons, George Glover, Frank M. Gray, Charles Grove, Kennedy J. Hanley, Frank Hyatt, Samuel Jellich, Poker John, James Kelly, J. B. Kerr, Ole Kvan, Henry Lackey, George Liennecke, Harold Langjord, W. H. Luddy, J. Lannon, John Leonard, James Lemon, John Murphy, William Murphy, John Doe Martin, whose Christian name is unknown to the grand jurors; John J. Malley, Henry McCarthy, Michael McGowan, James McBride, J. D. McLeod, D. McPhee, Jack McGree, C. McMillin, Jack Norton, Nels Nelson, Daniel O'Neill, John Oleson, William Parisault, William Parks, Barney Riley, John Sweeny, D. Schultz, J. C. Sturgis, Jack Smith, Quinn Sullivan, C. Sinclair, J. Soderburg, William Stimson, Ben. Snyder, Joseph Trainor,
Richard Thomas, John Van Dorn, August Vondotte, Jack
16 Wallace, J. A. Walker, A. D. Walker, Thomas Whalen, at the said Shoshone county, within the said northern division of the district of Idaho, did, on the 11th day of July, 1892, unlawfully, wilfully, fraudulently, and feloniously conspire, combine, confederate, and agree together to commit an offense against the United States, to wit, to corruptly and by force and threats obstruct and impede the due administration of justice in the aforesaid United States circuit court for the ninth judicial circuit, district of Idaho, and did thereafter, on the 12th day of July, 1892, in pursuance of said unlawful and malicious combination and conspiracy, unlawfully, wilfully, and feloniously, in the manner and form aforesaid, corruptly and by force and threats of violence obstruct and impede the due administration of justice in the aforesaid United States circuit court.

All of which is contrary to the form, force, and effect of the United States statutes in such cases made and provided and against the peace and dignity of the United States.

FREMONT WOOD,
United States District Attorney.

M. D. WRIGHT,
Foreman of the Grand Jury.

17 Names of the witnesses who were examined before the grand jury on the finding of the foregoing indictment.

V. M. Clement.	Frank Jenkins.	Robert Cheyne.
George B. McAulay.	Ed. Booth.	B. S. Lafferty.
C. M. Lafferty.	C. Sweeny.	R. T. Horn.
George McKinnis.	Robert Neil.	D. Cameron.
A. Monk.	Thomas Fernett.	J. M. Elison.
Henry Lamb.	C. A. Siringo.	A. L. Gross.
Van B. De Lashmutt.	Mrs. Kate A. Shipley.	L. Danforth.
Mrs. L. Danforth.	I. H. Kelly.	L. S. Clemens.
E. S. Gay.	Orrin Lamb.	John Todd.
S. Arbogast.	D. H. Sutherland.	

Endorsed as follows:

No. 1. In the district court of the United States within and for the northern division of the district of Idaho. The United States *vs.* Peter Breen *et al.*, defendants. Indictment for conspiracy. A true bill. M. D. Wright, foreman of the grand jury. Fremont Wood, U. S. district attorney. Presented by the foreman of the grand jury in open court and filed in the presence of the grand jury this 1st day of September, A. D. 1892. A. L. Richardson, clerk.

18 *Motion to Quash Indictment.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now the defendant Campbell W. Bushnell and moves the court to quash the indictment filed in this action on the ground that it appears upon the face of said indictment:

I.

That the court has no jurisdiction of the subject-matter of said indictment or the offense charged in said indictment and no jurisdiction of the person of the said defendant.

II.

That the said grand jury had no jurisdiction, power, or authority to examine into the offense alleged in said indictment, or to hear any evidence of or concerning the same, or to find or present to this court any indictment against said mentioned defendant or any of them for or on account of the matters or things charged and alleged in said indictment.

F. GANAHL,
Attorney for Defendant.

Endorsed as follows:

No. 1. In the district court of the United States within and for the northern division of the district of Idaho. United States *vs.* Peter Breen *et al.* Motion to quash indictment. Filed Sept. 5th, 1892. A. L. Richardson, clerk. F. Ganahl and P. Reddy, attorneys for defendant Campbell W. Bushnell.

19 *Motion for Severance.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant Campbell W. Bushnell and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

F. GANAHL AND P. REDDY,
Attorneys for Defendant.

Endorsed as follows:

No. 1. In the district court of the United States within and for the northern division of the district of Idaho. United States *vs.* Peter Breen *et al.* . Motion for severance. Filed Sept. 5th, 1892. A. L. Richardson, clerk.

20 *Motion to Quash Indictment.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now the defendants George A. Pettibone, Michael L. Devine, John Murphy, Frank M. Gray, Charles St. Clair, John Norton, Barney Riley, W. H. Frazier, J. W. Wallace, J. N. Gillis, Joseph Trainor, Frank Hyatt, and J. W. Glass and move the court to quash the indictment filed in this action on the ground that it appears upon the face of said indictment:

I.

That the court has no jurisdiction of the subject-matter of said indictment or the offense charged in said indictment and no jurisdiction of the persons of the said defendants or any of them.

II.

That the said grand jury had no jurisdiction, power, or authority to examine into the offense alleged in said indictment, or to hear any evidence of or concerning the same, or to find or present to this court any indictment against said last-mentioned defendants or any of them for or on account of the matters or things charged and alleged in said indictment.

P. REDDY AND HAWLEY & REEVES,
Att'ys for said Def'ts.

Endorsed as follows:

No. 1. In the district court of the U. S. within and for the northern division of the district of Idaho. The U. S. *vs.* Peter Breen *et al.* Motion to quash indictment. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def'ts.

21 *Demurrer to Indictment.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now the defendants George A. Pettibone, Michael L. Devine, John Murphy, Frank M. Gray, Charles St. Clair, John Norton, Farney Riley, W. H. Frazier, J. W. Wallace, J. N. Gillis, Joseph Trainer, Frank Hyatt, and J. W. Glass and for themselves alone and not for any other of the defendants named in this action demur to the indictment filed herein upon the ground that it appears upon the face of the indictment:

I.

That the grand jury by which it was found had no legal authority to inquire into the offense charged.

II.

That this court has no jurisdiction over the offense charged in said indictment.

III.

That the facts stated in said indictment do not constitute a public offense against the United States or an offense under the laws of the United States.

Wherefore the said defendants pray to be hence dismissed.

P. REDDY AND HAWLEY & REEVES,
Attorneys for said Defendants.

22 Endorsed as follows:

No. 1. In district court of U. S. in and for the northern division of the district of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer to indictment. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def'ts herein demurring.

23 *Demurrer of C. W. Bushnell.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now the defendant Cambell W. Bushnell and for him alone and not for any other of the defendants named in this action demur to the indictment filed herein upon the ground that it appears upon the face of the indictment:

I.

That the grand jury by which it was found had no legal authority to inquire into the offense charged.

II.

That this court has no jurisdiction over the offense charged in said indictment.

III.

That the facts stated in said indictment do not constitute a public offense against the United States or an offense under the laws of the United States.

Wherefore the said defendant prays to be hence dismissed.

F. GANAHL,
Attorney for said Defendant.

Endorsed as follows:

No. 1. In the district court of the United States within and for the northern division of the district of Idaho. The United States *vs.* Peter Breen *et al.* Demurrer of C. W. Bushnell. Filed Sept. 5th, 1892. A. L. Richardson, clerk. F. Ganahl and P. Reddy, attorneys for def't.

24 *Motion to Set Aside and Affidavit in Support of said Motion.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now the defendants George A. Pettibone, Michael L. Devine, John Murphy, Frank M. Gray, Charles St. Clair, John Norton, Barney Riley, W. H. Frazier, J. W. Wallace, J. N. Gillis, Joseph Trainor, Frank Hyatt, and J. W. Glass and C. W. Bushnell and move the

court to set aside the indictment filed in this action upon the following grounds, to wit:

I.

That F. W. Crosthwaite, Esq., a person other than the United States district attorney for the district of Idaho, was permitted to be present during the session of the grand jury which found the indictment filed herein, and when the charge embraced in said indictment was under consideration, and then and there addressed said grand jury concerning said charge and the evidence adduced and to be adduced thereon, and to address said grand jury of and concerning the crime charged in said indictment, and to advise said grand jury concerning the evidence adduced and the duty of said grand jury in the premises.

Said motion will be made upon the records and files of this court and the affidavit of James H. Hawley, Esq., attached hereto and filed herewith.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendants George A. Pettibone, Michael L. Devine, John Murphy, Frank M. Gray, Charles St. Clair, John Norton, Barney Riley, W. H. Frazier, J. W. Wallace, J. N. Gillis, Joseph Traynor, Frank Hyatt, and J. W. Glass.

FRANK GANAHL,
Att'y for C. W. Bushnell, One of Def'ts.

25 In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

STATE OF IDAHO,
County of Kootenai, } *ss:*

James H. Hawley, being first duly sworn, deposes and says—

That he is one of the attorneys for the defendants in the above-entitled action; that as such attorney he asked F. M. Crosthwaite, Esq., on September 2d, 1892, at Coeur d'Alene city, Kootenai county, Idaho, in regard to said Crosthwaite's connection with this cause, and the said Crosthwaite informed affiant then and there that he had been in constant attendance upon said grand jury during their consideration of this case and had advised with them in regard thereto, and had examined many witnesses before them and had acted throughout said grand jury's investigation of this cause as special assistant to United States district attorney, Fremont Wood, Esq. Affiant further states that on September 5th, 1892, at said town of Coeur d'Alene city, Fremont Wood, Esq., United States district attorney for Idaho, informed affiant that said Crosthwaite, during the entire time that said grand jury had been considering this case, has been acting as his assistant, and had at all times free access to the grand-

jury room while the grand jury was in session, and had been constantly in attendance on said grand jury, advising with them in regard to this case, and had examined witnesses brought before said grand jury in this cause. Further affiant sayeth not.

JAMES H. HAWLEY.

Subscribed and sworn to before me this 5th day of September, 1892.

A. L. RICHARDSON, *Clerk.*

26 Endorsed as follows:

No. 1. In the district court of U. S. in and for the northern division of the district of Idaho. The U. S. *vs.* Peter Breen *et al.* Motion to set aside and affidavit in support of said motion. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def'ts making said motion.

27 *Demurrer of Defendant Michael L. Devine for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant Michael L. Devine and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant Michael Devine.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't Michael L. Devine.

28 *Demurrer of Defendant John Murphy for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant John Murphy and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant John Murphy.

Endorsed as follows:
No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant John Murphy for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't John Murphy.

29 *Demurrer of Defendant George A. Pettibone for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant George A. Pettibone and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant George A. Pettibone.

Endorsed as follows:
No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant George A. Pettibone for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't George A. Pettibone.

30 *Demurrer of Defendant Charles St. Clair for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant Charles St. Clair and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant Charles St. Clair.

Endorsed as follows:
No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant Charles St. Clair for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't Charles St. Clair.

31 *Demurrer of Defendant J. W. Wallace for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant J. W. Wallace and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant J. W. Wallace.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant J. W. Wallace for a separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't J. W. Wallace.

32 *Demurrer of Defendant John W. Glass for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant John W. Glass and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

____ ____,
Attorneys for Defendant John W. Glass.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant John W. Glass for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't John W. Glass.

33 *Demurrer of Defendant John Norton for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant John Norton and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. RUDDY AND HAWLEY & REEVES,
Attorneys for Defendant John Norton.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant John Norton for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't John Norton.

34 *Demurrer of Defendant Frank M. Gray for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant Frank M. Gray and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. RUDDY AND HAWLEY & REEVES,
Attorneys for Defendant Frank M. Gray.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant Frank M. Gray for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't Frank M. Gray.

35 *Demurrer of Defendant W. H. Frazier for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant W. H. Frazier and demands and re-

quires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. RUDDY AND HAWLEY & REEVES,
Attorneys for Defendant W. H. Frazier.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant W. H. Frazier for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't W. H. Frazier.

36 *Demurrer of Defendant Barney Riley for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant Barney Riley and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. RUDDY AND HAWLEY & REEVES,
Attorneys for Defendant Barney Riley.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant Barney Riley for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't Barney Riley.

37 *Demurrer of Defendant J. N. Gillis for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant J. N. Gillis and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. RUDDY AND HAWLEY & REEVES,
Attorneys for Defendant J. N. Gillis.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant J. N. Gillis for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't J. N. Gillis.

38 *Demurrer of Defendant Joseph Trainor for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant Joseph Trainor and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant Joseph Trainor.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant Joseph Trainor for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't Joseph Trainor.

39 *Demurrer of Defendant F. S. Hyatt for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Comes now the defendant F. S. Hyatt and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant F. S. Hyatt.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant F. S. Hyatt for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't F. S. Hyatt.

40 *Demurrer of Defendant Daniel Caddigan for Separate Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.* Defendants.

Comes now the defendant Daniel Caddigan and demands and requires that he be tried separately and apart from each and every of his codefendants jointly indicted with him herein.

P. REDDY AND HAWLEY & REEVES,
Attorneys for Defendant Daniel Caddigan.

Endorsed as follows:

No. 1. In the district court of U. S. within and for northern division of the dist. of Idaho. The U. S. *vs.* Peter Breen *et al.* Demurrer of defendant Daniel Caddigan for separate trial. Filed Sept. 5th, 1892. A. L. Richardson, clerk. P. Reddy and Hawley & Reeves, att'ys for def't Daniel Caddigan.

41 *Challenge.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

The defendants G. A. Pettibone, Michael L. Devine, John Murphy, Frank M. Gray, Charles St. Clair, John Norton, Barney Riley, W. H. Frazer, John W. Glass, Frank Hyatt, Joseph Trainor, J. W. Wallace, and J. N. Gillis now challenge the persons named in the return of Deputy United States Marshal J. C. Stranahan to serve as jurors and to complete the panel of trial jurors in this cause and the entire panel to act as jurors in this case, upon the following grounds, to-wit:

1. That the names so mentioned in said return were not drawn as jurors from the jury-box of this court or any jury-box designated by the court, and that the officer, Deputy United States Marshal J. C. Stranahan who selected and summoned said persons was biased against the said defendants; and said defendants challenge said panel of jurors upon the ground of implied bias in the officer who summoned said jurors, viz., in having formed and expressed an unqualified opinion or belief that the prisoners are guilty of the offense charged in the indictment in this action.

2. That the said Deputy United States Marshal J. C. Stranahan is actually biased against said defendants to such an extent as to

render him not impartial as between the United States Government as prosecutor in this action and the said defendants herein.

P. REDDY AND HAWLEY & REEVES,
Attorney- for Defendants Except C. W. Bushnell.

42 (Endorsed:) No. 1. In the district court of the United States within and for the northern division of the State of Idaho. United States *vs.* Peter Breen *et al.* Challenge. Filed Sept. 9th, 1892. A. L. Richardson, clerk.

43 *Motion to Quash Venire.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

The defendants G. A. Pettibone, Michael L. Devine, John Murphy, Frank M. Gray, Charles St. Clair, John Norton, Barney Riley, W. H. Frazer, John W. Glass, Frank Hyatt, Joseph Trainor, J. W. Wallace, and J. N. Gillis now move the court to quash the venire and return of jurymen made by Deputy United States Marshal J. C. Stranahan, dated the 9th day of September, A. D. 1892, purporting to have been made under the order of this honorable court, made and entered in the minutes of the court on the 8th day of September, 1892, ordering the United States marshal for the district of Idaho to return jurymen from the bystanders sufficient to complete the jury panel in this case upon the following grounds, to wit:

1. That the said Deputy United States Marshal J. C. Stranahan is not a person indifferent as between the Government of the United States as plaintiff in this action and the above-named defendants, but, on the contrary, is a partisan of the prosecution in this case.

2. That the persons summoned, served, and returned to act as jurors in this case by said Deputy United States Marshal Stranahan were not called, served, or returned from the bystanders, but, on the contrary, were selected by the said Deputy United States Marshal J. C. Stranahan from persons who were not in the court-house or in the court buildings or in Coeur d'Alene city, the place at which this honorable court is being held, but from other and more distant parts of the county of Kootenai, State of Idaho.

P. REDDY AND HAWLEY & REEVES,
Attorneys for said Defendants.

44 (Endorsed:) No. 1. U. S. district court within and for the northern division of the district of Idaho. United States *vs.* Peter Breen *et al.* Motion to quash venire. Filed Sept. 9th, 1892. A. L. Richardson, clerk.

45 *Motion to Quash Venire of C. W. Bushnell.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

The defendant Campbell W. Bushnell now moves the court to quash the venire and return of jurymen made by Deputy United States Marshal J. C. Stranahan, dated the 9th day of September, A. D. 1892, purporting to have been made under the order of this honorable court, made and entered in the minutes of the court on the 8th day of September, 1892, ordering the United States marshal for the district of Idaho to return jurymen from the bystanders sufficient to complete the jury panel in this case upon the following grounds, to wit:

1. That the said Deputy United States Marshal Strahahan is not a person indifferent as between the Government of the United States as plaintiff in this action and the above-named defendant, but, on the contrary, is a partisan of the prosecution in this case.

2. That the persons summoned, served, and returned to act as jurors in this case by said Deputy United States Marshal Stranahan were not called, served, or returned from the bystanders, but, on the contrary, were selected by the said Deputy United States Marshal J. C. Stranahan from persons who were not in the court-house or in the court buildings or in Coeur d'Alene city, the place at which this honorable court is being held, but from other and more distant parts of the county of Kootenai, State of Idaho.

F. GANAHL,
Attorney for said Defendant, C. W. Bushnell.

46 Endorsed as follows:

No. 1. U. S. dist. court in and for the northern division of the dist. of Idaho. The United States *vs.* Peter Breen *et al.* Motion to quash venire of C. W. Bushnell. Filed Sept. 9th, 1892. A. L. Richardson, clerk.

47 *Challenge to Venire Returned Sept. 9th, 1892.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

The defendant Campbell W. Bushnell now challenge- the persons named in the return of Deputy United States Marshal J. C. Stranahan to serve as jurors and to complete the panel of trial jurors in

this cause and the entire panel to act as jurors in this case, upon the following grounds, to wit:

1. That the names so mentioned in said return were not drawn as jurors from the jury-box of this court or any jury-box designated by the court, and that the officer, Deputy United States Marshal J. C. Stranahan, who selected and summoned said persons was biased against the said defendant, and said defendant challenges said panel of jurors upon the ground of implied bias in the officer who summoned said jurors, viz., in having formed and expressed an unqualified opinion or belief that the prisoners are guilty of the offense charged in the indictment in this action.

2. That the said Deputy United States Marshal J. C. Stranahan is actually biased against said defendant to such an extent as to render him not impartial as between the United States Government, as prosecutor in this action, and the said defendant herein.

F. GANAHL,
Attorney for said Defendant C. W. Bushnell.

(Endorsed:) No. 1. In the U. S. dist. court of the district of Idaho. The United States *vs.* Peter Breen *et al.* Challenge to venire returned Sept. 9th, 1892. Filed Sept. 9th, 1892. A. L. Richardson, clerk.

48 *Verdict.*

In the District Court of the United States for the Northern Division of Idaho.

THE UNITED STATES
vs.
PETER BREEN *et al.*

We, the jury empannelled in the above-entitled cause, find the defendants Geo. A. Pettibone, John Murphy, M. L. Devine, and C. Sinclair guilty as charged in the indictment.

And we find the defendants C. W. Bushnell, John Norton, Barney Riley, F. M. Gray, Joseph Trainor, Frank Hyatt, W. H. Frazier, J. W. Wallace, J. W. Glass, and Joseph Gillis not guilty.

G. W. TOMER, *Foreman.*

(Endorsed:) No. 1. In the dist. court of the United States, northern division Idaho. The United States *vs.* Peter Breen *et al.* Verdict. Filed Sept. 28th, 1892. A. L. Richardson, clerk.

49 *Motion in Arrest of Judgment.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now the defendants Charles St. Clair, John Murphy, George A. Pettibone, and Michael L. Devine, by their counsel, P. Reddy and Hawley & Reeves, and move in arrest of judgment herein, and that no judgment be rendered against the said defendants or any or either of them on the verdict of guilty returned by the jury herein on the 28th day of September, 1892, on the grounds:

I.

That the grand jury by which the indictment was found had no legal authority to inquire into the offense charged.

II.

That this court had no jurisdiction over the offense charged in said indictment.

III.

That the facts stated in said indictment do not constitute a public offense against the United States or an offense under the laws of the United States.

P. REDDY AND HAWLEY & REEVES,
Att'ys for Def'ts.

(Endorsed:) No. 1. U. S. dist. court, northern division, dist. of Idaho. The United States *vs.* Peter Breen *et al.* Motion in arrest of judgment. Filed Sept. 28th, 1892. A. L. Richardson, clerk.

50 *Motion to Set Aside Verdict and Grant a New Trial.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Come now Charles St. Clair, John Murphy, George A. Pettibone, and Michael L. Devine, defendants herein, convicted by the verdict of the jury returned herein on the 28th day of September, 1892, and move the court to set aside the verdict herein and to grant a new trial to the said defendants on the grounds:

1. That the court misdirected the jury on matters of law and

erred in the decisions of questions of law arising during the progress of the trial herein.

2. That the verdict of the jury is contrary to law.

3. That the verdict herein is contrary to the evidence.

This motion is based upon the minutes and files of the court in this cause and upon the bill of exceptions herewith presented.

P. REDDY AND HAWLEY & REEVES,
Atty's for Def'ts.

(Endorsed:) No. 1. U. S. dist. court, northern division, dist. of Idaho. The United States *vs.* Peter Breen *et al.* Motion to set aside verdict and grant a new trial. Filed Sept. 28th, 1892. A. L. Richardson, clerk.

51 In the District Court of the United States for the Northern Division of Idaho, at a Special Term Held at the Court-Room, in Cœur d'Alene City, Idaho, on the Second Day of September, 1892.

Present: Hon. Jas. H. Beatty, judge.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

On this day the defendants C. W. Bushnell, Geo. A. Pettibone, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, Dan'l Caddigan, and F. M. Gray came into court to be arraigned upon the true bill of indictment heretofore presented against them by the grand jury, F. Ganahl, Esqr., appearing as counsel for the def't C. W. Bushnell and Patrick Reddy and Messrs. Hawley and Reeves for the other defendants named, the U. S. attorney being present. The defendant indicted under the name of George Pettibone stating in answer to the court that his true name is George A. Pettibone, ordered that he be proceeded against under his true name, and the defendants C. W. Bushnell, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, Dan'l Caddigan, and F. M. Gray, being asked separately if these were their true names, each answered for himself that it was. The formal reading of the indictment was waived and the defendants furnished a copy.

Ordered that said defendants plead to said indictment on Monday, the 5th inst., at 10 o'clock a. m.

SATURDAY, *September 3rd*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

52 On this day the defendants indicted under the names of Jack Wallace, Joseph Trainer, J. W. Glass, and Frank Hyatt

came into court in person and by their attorneys, Patrick Reddy, Esqr., and Messrs. Hawley and Reeves, to be arraigned upon the true bill of indictment heretofore presented against them by the grand jury. In answer to the court the defendant Wallace stated his true name to be J. W. Wallace; ordered that he be proceeded against under his true name. The other defendants named stated their true names to be Joseph Trainer, J. W. Glass, and Frank Hyatt. The formal reading of the indictment was waived and defendants furnished a copy thereof. It appearing that the name of Daniel Caddington had been omitted from the indictment herein by mistake, ordered that the arraignment of the said Dan'l Caddigan heretofore made be set aside.

MONDAY, *September 5th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The time heretofore fixed for the defendants C. W. Bushnell, Geo. A. Pettibone, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, F. M. Gray, J. W. Wallace, Joseph Trainer, J. W. Glass, and Frank Hyatt to plead having arrived, came said defendants in person and by their respective attorneys of record. The defendants Geo. A. Pettibone, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, F. M. Gray, J. W. Wallace, Joseph Trainer, J. W. Glass, and Frank Hyatt, by their attorneys, Patrick Reddy, Esqr., and Messrs. Hawley and Reeves, moved the court to quash the indictment herein; which motion, having been submitted without argument, was by the court denied; to which ruling the said defendants, by their counsel, then and there excepted,

The defendant C. W. Bushnell, by his attorney, Frank Ganahl, Esqr., moved the court to quash the indictment herein;
53 which motion, having been submitted without argument, was by the court denied; to which ruling the said defendant, by his counsel, then and there excepted.

Patrick Reddy, Esqr., and Messrs. Hawley and Reeves, on behalf of the defendants above named for whom they appear, moved the court to set aside the indictment herein; which motion, having been submitted without argument, was by the court denied; to which ruling the said defendants, by their said counsel, then and there excepted.

The defendant C. W. Bushnell, by his counsel, Frank Ganahl, Esqr., moved the court to set aside the indictment herein; which motion, having been submitted without argument, was by the court denied; to which ruling the said defendant, by his counsel, then and there excepted.

A demurrer was here interposed to the indictment herein by Patrick Reddy, Esqr., and Messrs. Hawley and Reeves, on behalf of the defendants above named whom they represent, and, the same having been submitted without argument, the court ordered that

said demurrer be, and the same is hereby, overruled; to which ruling the said defendants, by their said counsel, then and their excepted.

Demurrer was interposed to the indictment herein on behalf of the defendant C. W. Bushnell, by his counsel, and, the same having been submitted without *without* argument, the court ordered that said demurrer be, and the same is hereby, overruled; to which ruling the said defendant, by his counsel, then and there excepted.

Thereupon, the said defendants above named being each asked for his plea, each defendant pleaded separately for himself that he is not guilty of the offense charged in the indictment.

Patrick Reddy, Esqr., and Messrs. Hawley and Reeves here moved the court that a day be set for the arraignment of all the defendants named in the indictment herein who have not been arraigned; which motion, having been submitted without argument, was by the court denied on the ground that said motion is premature; to which ruling an exception was duly allowed and entered.

54 Frank Ganahl, Esqr., on behalf the defendant C. W. Bushnell, here moved the court for a separate trial for said defendant, and objected to the trial of said defendant unless all the defendants under indictment herein be tried; which motion, having been submitted without argument, was by the court denied; to which ruling the said defendant, by his said counsel, then and there excepted.

Patrick Reddy, Esqr., and Messrs. Hawley & Reeves, on behalf of the defendants above named for whom they appear, moved the court for a separate trial for each defendant; which motion, having been submitted without argument, was by the court denied; to which ruling the said defendant, by their said counsel, excepted.

On this day the defendant Joseph Gillis came into court in person and by his attorney-, Patrick Reddy, Esqr., and Messrs. Hawley & Reeves, to be arraigned upon the true bill of indictment heretofore presented against him by the grand jury. Being asked if Joseph Gillis was his true name the defendant stated it was. The formal reading of the indictment was waived, and the said defendant, being asked for his plea, pleaded that he is not guilty of the offense charged in the indictment. By agreement it was ordered that the name of said defendant Gillis be inserted in the papers this day filed in said cause on behalf of the defendants, to wit, the motion to quash the indictment, the motion to set aside the indictment, the demurrer to the indictment, and the motion for a separate trial for each defendant.

On motion of the U. S. attorney ordered that W. B. Heyburn and Albert Hagan, Esqrs., be entered of record as assistant counsel on behalf of the United States.

The defendants Barney Reilly, M. L. Devine, John Murphy, F. M. Gray, Joseph Gillis, John Norton, J. W. Glass, Geo. A. Pettibone, Frank Hyatt, W. H. Frazer, J. W. Wallace, and Charles Sinclair, by their attorneys of record, moved the court that subpœnas be

55 issued for witnesses for said defendants at the expense of the United States, reading the separate affidavits of said defend-

ants in support of said motion. Said motion was opposed in part by counsel for plaintiff, and after argument said motion was submitted and taken under advisement by the court.

C. T. Stranahan was appointed and sworn as bailiff.

TUESDAY, *September 6th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

On this day the court announced its decision on the defendants' motion for witnesses to be procured for said defendants at the expense of the United States, sustaining the same in part, denying said motion in part, and ordered that subpœnaes be issued for the following-named witnesses, and that the expenses of said witnesses be paid by the United States, to wit: Thomas Quinn, Gus, the Swede, who works with Quinn; W. G. Broderick, Robert Bradley, Ed. Bulger, Eugene Sage, Mrs. Hollihan, Rob't Shane, Wm. Bailey, Penwill Bailey, R. A. Cunningham, Jas. McAulay, Wm. Smith, John Golson, Thos. Meager, Harry Barger, Mrs. J. N. Gillis, Mrs. Wm. Murphy, Wm. Murphy, Mrs. J. W. Glass, — Bradley, ass't sup't Bunker Hill Co.; John Moffit, Michael Godfrey, Chas. Tremble, —— Clemens, constable at Wardner; Mrs. Frank Hyatt, G. W. Marsh, Richard Daxon, J. W. Livers, Anna Connelly, Pat. Whalen, A. McGillivary, Peter Connelly, Joseph Campbell, Wm. Foure, Daniel Cameron, Conductor Brown, of the Northern Pacific R'y Company.

To the refusal of the court to order subpœnaes for other witnesses named in the affidavit filed in said cause the said defendants, by their counsel, then and there excepted in due form of law.

WEDNESDAY, *September 7th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

Now, on this day, this cause as to the defendants C. W.
56 Bushnell, Geo. A. Pettibone, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, F. M. Gray, J. W. Wallace, Joseph Trainer, J. W. Glass, Frank Hyatt, and Joseph Gillis came regularly on to be heard and tried before the court and jury, Fremont Wood, U. S. attorney; F. B. Crossthwaite, ass't U. S. attorney; W. B. Heyburn and Albert Hagan, Esqrs., appearing as counsel for plaintiff, and Frank Ganahl, Esq., for the def't C. W. Bushnell and Patrick Reddy, Esqr., and Messrs. Hawley and Reeves for the defendants Geo. A. Pettibone, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, F. M. Gray, J. W. Wallace, Joseph Trainer, J. W. Glass, Frank Hyatt, and Joseph Gillis, all of said defendants being in court in person.

The clerk, under direction of the court, proceeded to draw from the jury-box the names of twelve persons, one at a time, written on

separate slips of paper and folded, to serve as jurors in said cause. The following-named persons drawn from the box and sworn on *voir dire* were excused for cause, to wit, John McGuinness, J. C. Flannigan, D. W. Driskell, and R. R. Mann; Frank Stanbury, a person drawn from the box and sworn on *voir dire*, was excused on peremptory challenge by counsel for plaintiff, and the hour for adjournment having arrived with the following-named jurors on the panel, to wit, G. W. Tomer, Benjamin Butler, James Johnson, Patrick Barton, U. S. Chambers, H. Bromeling, Vin Wells, J. W. Hartington, W. Fenderson, J. M. Emerson, J. W. Berreman, and John O. Legg, the court admonished said jurors and adjourned the further hearing of said cause until to-morrow, the 8th inst., at 9 o'clock a. m.

THURSDAY, *September 8th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed; the twelve jurors sworn on *voir*
57 *dire* were called and found to be present, the respective attorneys of record and the defendants on trial, being in court in person, having been called and answered to their names.

Patrick Reddy, Esqr., and Messrs. Hawley & Reeves, on behalf of the defendants whom they represent, here interposed a peremptory challenge to the juror James Johnson. Frank Ganahl, Esqr., on behalf of the defendant C. W. Bushnell, refused to join in said challenge and objected to the same. Thereupon the court overruled the same; to which ruling the defendants, by their separate counsel, excepted in due form of law.

The defendant C. W. Bushnell, by his counsel, interposed a peremptory challenge to the juror J. W. Hartinger, which challenge was not joined in by counsel for the other defendants, who objected to the same. Counsel for plaintiff objected on the ground of there being no proper challenge. Thereupon the court overruled said challenge; to which ruling the defendants, by their separate counsel, then and there excepted.

The counsel for all the defendants on trial here announced that they had agreed that said challenge should be allowed. Plaintiff's counsel objected on the ground that there is no proper challenge. The court allowed the same, and the said J. W. Hartinger was excused.

The juror G. D. Finn having been drawn from the box to fill the panel, the counsel for plaintiff challenged said juror for cause, which challenge was denied by counsel for defendants. Thereupon John Barr and J. C. Stranahan were sworn and examined as witnesses on behalf of plaintiff in said matter, and Joseph Gillis, J. W. Glass, and Frank Hyatt were sworn and examined on behalf of defendants in said matter, after which the court sustained the challenge and discharged said juror from the panel in said cause and from further service as a juror of this court.

S. S. Rogers, a person drawn from the box and sworn on *voir dire*, was excused for cause, and the venire here becoming exhausted, with eleven jurors only on the panel, who have been sworn on their *voir dire* and examined for cause, to wit, G. W. Tomer, Ben-
58 jamin Butler, James Johnson, U. S. Chambers, H. Bromeling, Vin Wells, W. Fenderson, J. M. Emerson, J. W. Berremen, Patrick Barton, and John O. Legg, and it satisfactorily appearing to the court that there is not a sufficient number of trial jurors in attendance, ordered that a venire issue to the marshal to summon twelve good and lawful men from the bystanders to be and appear in the court-room of said court, at Coeur d'Alene city, on to-morrow, the 9th inst., at 9 o'clock a. m., to serve as such trial jurors, which was done accordingly. Thereupon the court admonished the eleven jurors on the panel and adjourned the further hearing of said cause until to-morrow, the 9th inst., at 9 o'clock a. m.

FRIDAY, *September 9th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed; the eleven jurors sworn on *voir dire* called and found to be present, the respective attorneys of record and the defendants on trial being in court.

The defendants represented by Patrick Reddy, Esqr., and Messrs. Hawley & Reeves and the defendant C. W. Bushnell, by his attorney, Frank Ganahl, Esqr., here moved separately to quash the venire for jurors issued on the 8th inst. and this day filed, which motion was opposed by plaintiff's counsel. Thereupon J. C. Stranahan and A. L. Richardson were sworn as witnesses in said matter, after which the court denied said motion; to which ruling the said defendants, by their separate counsel, then and there excepted.

The said defendants thereupon separately, as above stated, interposed a challenge to said venire, which challenge was denied by plaintiff's counsel. J. C. Stranahan was sworn and examined as a witness in said matter, after which the court overruled said chal-
lenge; to which ruling the said defendants, by their separate
59 counsel, then and there excepted. Thereupon the clerk, under direction of the court, proceeded to fill the panel. Robert McCrea, a person drawn from the box and sworn, was excused because he is not a citizen. Alexander Powers, a person drawn from the box and sworn, was excused for cause. Patrick Barton and John O. Legg, persons drawn from the box and sworn, were excused on peremptory challenge by counsel for plaintiff. James Johnson, a person drawn from the box and sworn, was excused on peremptory challenge by counsel for defendants, the defendants on trial all joining in said challenge. W. Fenderson, a person drawn from the box and sworn, was excused on peremptory challenge by counsel for defendants.

The defendants all join here in interposing a peremptory chal-

lenge to the juror J. W. Berreman, which challenge was by the court overruled, to which ruling the defendants, by their said counsel, then and there excepted in due form of law, and the following are the names of the persons drawn from the box, sworn on *voir dire*, passed upon and sworn by the clerk to well and truly try said cause and a true verdict render therein according to the evidence, to wit: G. W. Tomer, Benjamin Butler, U. S. Chambers, H. Bromeling, Vin Wells, J. M. Emerson, J. W. Berreman, Wm. Martin, F. S. Newson, L. B. McCarter, B. W. Benefiel, and Wm. Ryan.

The clerk, under direction of the court, read the indictment to the jury and stated the plea of the defendants C. W. Bushnell, Geo. A. Pettibone, John Norton, W. H. Frazer, Barney Reilly, M. L. Devine, C. Sinclair, John Murphy, F. M. Gray, J. W. Wallace, Joseph Trainer, J. W. Glass, Frank Hyatt, and Joseph Gillis.

The following-named persons were sworn and examined as witnesses on behalf of plaintiff, to wit: A. L. Richardson and V. M. Clement; and after the examination-in-chief of the latter-named witness the court admonished the jury and adjourned the further hearing of said cause until to-morrow, the 10th inst., at 9 o'clock a. m.

60 SATURDAY, *September* 10*th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and answered to their names.

The following-named witnesses were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to wit: V. M. Clement, concluded; Rob't Shane, John Shane, Charles Sweeney, and Francis Jenkins, after which the court admonished the jury, placed them in charge of a sworn officer of the court, and adjourned the further hearing of said cause until Monday, the 12th inst., at 9 o'clock a. m.

MONDAY, *September* 12*th*, 1892.

THE UNITED STATES *vs.* PETFR BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on the 10th inst. for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the said defendants having been called and each answering when so called.

The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to wit: Geo. B. McAulay, John Porcherons, A. L. Gross, W. W. Woods, and Van B. DeLash-

mutt, and during the cross-examination of the latter-named witness the court admonished the jury, placed the same in charge of a sworn officer of the court, and adjourned the further hearing of said cause until to-morrow, the 13th inst., at 9 o'clock a. m.

61 TUESDAY, *September* 13*th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and all answering to their names when so called.

The cross-examination of Van B. De Lashmutt was concluded, and one of the jurors, J. W. Berreman, being ill and unable to sit longer this day, the court admonished the jury, placed the same in charge of a sworn officer of the court, and adjourned the further hearing of said cause until to-morrow, the 14th inst., at 9 o'clock a. m.

WEDNESDAY, *September* 14*th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and all answering to their names when so called.

The following-named persons were called, sworn, examined, and cross-examined as witnesses on behalf of plaintiffs, to wit, Dr. L. Danforth, J. M. Brown, L. S. Clemens, E. E. Lashbrook, Dr. I. H. Kelley, F. M. Bradley, George McCuiness, E. R. Cameron, Henry Lamb, Orrin Lamb, and Dr. M. W. Bruner, after which the court admonished the jury, placed the same in charge of a sworn officer of the court, and adjourned the further hearing of said cause until to-morrow, the 15th inst., at 9 o'clock a. m.

J. C. Stranahan was sworn as additional bailiff to said jury.

62 THURSDAY, *September* 15*th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and all answering when so called.

The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to wit, H. M. Freeman, A. P. Bailey, W. H. Bailey, John L. Washburn, B. W. Washburn, and John C. Pulse, and during the cross-examination of the latter-named witness, the defendant C. W. Bushnell being ill and unable to be in court, the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 16th inst., at 9 o'clock a. m.

FRIDAY, *September* 16*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day proceeded with. Jury called and found to be present, the respective attorneys of record and the defendants on trial, except the defendant Bushnell, being in court; and it appearing to the court that the defendant C. W. Bushnell is ill and unable to be present, the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 17th inst., at 9 o'clock a. m.

SATURDAY, *September* 17*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

63 The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial except the defendant Bushnell being in court; and it satisfactorily appearing to the court that the defendant C. W. Bushnell is yet ill and unable to be present, the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until Monday, the 19th inst., at 9 o'clock a. m.

MONDAY, *September* 19*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on the 17th inst. for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and all answering when so called.

The cross-examination of John C. Pulse was concluded. The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to-wit, H. F. Peterson, Wm. R.

Shield, Wm. Price, Arch. McCrea, Richard Lorah; W. H. Bailey, recalled; Mrs. Danforth, Alexander Monk, S. Arbogast, Dr. Hugh France, J. C. Freighan, W. B. Swinerton, Jos. Tilley, Dugald Cameron, J. W. Ellison, Geo. Moison, and E. D. Booth. During the cross-examination of the latter-named witness the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 20th inst., at 9 o'clock a. m.

TUESDAY, *September 20th*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

64 The trial of this cause, adjourned on yesterday, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and each defendant answering to his name when so called.

The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to wit, Thomas Fernett, Jerome Day, N. Hood, Wm. Linney, Joseph Lapoint, C. K. Poteet, A. J. Frazier, Evan Thomas, F. R. Holmes, W. C. Human, E. S. Kinney, and J. Harvey Harris, after which the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 21st inst., at 9 o'clock a. m.

WEDNESDAY, *September 21st*, 1892.

THE UNITED STATES *vs.* PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and each defendant answering to his name when so called.

The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of plaintiff, to wit, John Kneebone, Frank C. Wilcox, W. W. Calder, Wm. Finch, H. R. Allen, F. R. Culbertson, James Harvey, R. J. Doherty, Harry L. Day, Charles Bishop, and C. A. Seringo, after which the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 22nd inst., at 9 o'clock a. m.

THURSDAY, *September* 22*nd*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

65 The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the latter having been called and all answering when so called.

Charles Bishop was recalled on behalf of plaintiff. Joseph Pinkham was sworn, examined, and cross-examined as a witness on the same behalf and the plaintiff rests here.

The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of defendants, to wit, Dr. Charles Janaway, W. N. Moffitt, Mrs. J. W. Glass, Mrs. Wm. Murphy, Mrs. Frank Hyatt, Mrs. Eugene Sage, Eugene Sage, August Nelson, Mrs. J. N. Gillis, Harry Barger, Wm. Faust, Ally McGilvary, Joseph Campbell, Miss Anne Campbell, Peter Connelly, H. P. Crandall, Mrs. Anna Hollihan, and Harvey Harris, after which the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 23rd inst., at 9 o'clock a. m.

FRIDAY, *September* 23*rd*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the said defendants having been called and all answering to their names when so called.

The following-named persons were sworn, examined, and cross-examined as witnesses on behalf of defendants, to wit, R. A. Cunningham, W. H. Frazer (def't), John O'Brien, Richard Daxon, Robert Jones, Barney O'Reilly (def't), Miss Maud Kriggs, John Norton (def't), Charles Sinclair (def't), and John Murphy (def't), after which the court admonished the jury, placed the same in charge of
66 sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 24th inst., at 10 o'clock a. m.

SATURDAY, *September* 24*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in

court, the latter having been called and all answering to their names when so called.

The defence rest here and the evidence and testimony closed; thereupon the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until Monday, the 26th inst., at 9.30 o'clock a. m.

MONDAY, *September* 26*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on the 24th inst. for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the said defendants having been called and all answering to their names when so called.

The court and jury were addressed by Fremont Wood, U. S. attorney on behalf of plaintiff, followed by C. W. Bushnell on his own behalf and by Jas. H. Hawley, Esqr., on behalf of the other defendants, after which the court admonished the jury, placed the same in charge of sworn officers of the court, and adjourned the further hearing of said cause until to-morrow, the 27th inst., at 9.30 o'clock a. m.

67 TUESDAY, *September* 27*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

The trial of this cause, adjourned on yesterday for further hearing, was this day resumed. Jury called and found to be present, the respective attorneys of record and the defendants on trial being in court, the said defendants having been called and all answering to their names when so called.

Patrick Reddy, Esqr., addressed the court and jury on behalf of defendants. W. B. Heyburn, Esqr., then concluded the argument on behalf of plaintiff and the argument closed. The court then delivered its instructions and charge to the jury, and said jury retired to their room to consider of their verdict in charge of a sworn officer of the court.

WEDNESDAY, *September* 28*th*, 1892.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

Now came the jury, all called and found to be present, the respective attorneys of record and the defendants on trial being in court, the said defendants having been called and all answering to their names when so called. Said jury being asked if they had agreed

upon a verdict, they, through their foreman, stated that they had and presented their written verdict in the words following, to wit:

"In the District Court of the United States for the Northern Division of Idaho.

THE UNITED STATES
vs.
PETER BREEN *et al.*

We, the jury empannelled in the above-entitled cause, find the defendants Geo. A. Pettibone, John Murphy, M. L. Devine,
68 and C. Sinclair guilty as charged in the indictment, and we find the defendants C. W. Bushell, John Norton, Barney Reilly, F. M. Gray, Joseph Trainer, Frank Hyatt, W. H. Frazier, J. W. Wallace, J. W. Glass, and Joseph Gillis not guilty.

G. W. TOMER, *Foreman.*"

Which verdict was recorded by the clerk and read to the jury, who confirmed the same; thereupon the court discharged said jury from the further consideration of said cause and ordered that the defendants Geo. A. Pettibone, John Murphy, M. L. Devine, and C. Sinclair be remanded to the custody of the marshal, and that the defendants C. W. Bushnell, John Norton, Barney Reilley, F. M. Gray, Joseph Trainer, Frank Hyatt, W. H. Frazier, J. W. Wallace, J. W. Glass, and Joseph Gillis be discharged from custody and their bail exonerated.

THE UNITED STATES
vs.
PETER BREEN *et al.* } Crim. No. 1. Conspiracy.

Now came the defendants George A. Pettibone, John Murphy, M. L. Devine, and C. Sinclair, by their attorneys of record, and moved the court in arrest of judgment herein; which motion was by the court overruled; to which ruling the said defendants, by their counsel, then and there excepted; thereupon the said defendants, by their said counsel, moved the court to set aside the verdict and grant a new trial herein, and the court being about to adjourn the said defendants were sentenced as follows, to wit:

Geo. A. Pettibone to serve in the Detroit house of correction, Detroit, Michigan, two years; John Murphy to serve in the Detroit house of correction, Detroit, Michigan, fifteen months; M. L. Devine to serve in the Detroit house of correction, Detroit, Michigan, eighteen months; C. Sinclair to serve in the Detroit house of correction, Detroit, Michigan, eighteen months. See journal of criminal judgments for judgments in full, made a part hereof.

69 THE UNITED STATES
against
PETER BREEN *et al.* } Convicted of Conspiracy.

Now, on this 28th day of September, 1892, the United States district attorney, with the defendant Geo. A. Pettibone and his coun-

sel, James H. Hawley, Esqr., came into court. The defendant was duly informed by the court of the nature of the indictment found against him for the crime of conspiracy committed on the eleventh day of July, A. D. 1892; of his arraignment and plea of "Not guilty as charged in said indictment;" of his trial and the verdict of the jury on the 28th day of September, A. D. 1892, "Guilty as charged in the indictment." The defendant was then asked by the court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court—

Now, therefore, the said defendant having been convicted of the crime of conspiracy—

It is hereby considered and adjudged that the said defendant, Geo. A. Pettibone, be imprisoned and kept in the Detroit house of correction, at Detroit, Michigan, for the term of two years; and it is further ordered and adjudged that said defendant be, and is hereby, remanded to the custody of the United States marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

70 THE UNITED STATES *against* PETER BREEN *et al.* } Convicted of Conspiracy.

Now, on this 28th day of September, 1892, the United States district attorney, with the defendant John Murphy and his counsel, James H. Hawley, Esqr., came into court. The defendant was duly informed by the court of the nature of the indictment found against him for the crime of conspiracy committed on the eleventh day of July, A. D. 1892; of his arraignment and plea of "Not guilty as charged in said indictment;" of his trial and the verdict of the jury on the 28th day of September, A. D. 1892, "Guilty as charged in the indictment." The defendant was then asked by the court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court—

Now, therefore, the said defendant having been convicted of the crime of conspiracy—

It is hereby considered and adjudged that the said defendant, John Murphy, be imprisoned and kept in the Detroit house of correction, at Detroit, Michigan, for the term of fifteen months; and it is further ordered and adjudged that said defendant be, and is hereby, remanded to the custody of the United States marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

71 THE UNITED STATES *against* PETER BREEN *et al.* } Convicted of Conspiracy.

Now, on this 28th day of September, 1892, the United States district attorney, with the defendant M. L. Devine and his counsel,

James H. Hawley, Esqr., came into court. The defendant was duly informed by the court of the nature of the indictment found against him for the crime of conspiracy committed on the eleventh day of July, A. D. 1892; of his arraignment and plea of "Not guilty as charged in said indictment;" of his trial and the verdict of the jury on the 28th day of September, A. D. 1892, "Guilty as charged in the indictment." The defendant was then asked by the court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court—

Now, therefore, the said defendant having been convicted of the crime of conspiracy—

It is hereby considered and adjudged that the said defendant, M. L. Devine, be imprisoned and kept in the Detroit house of correction, at Detroit, Michigan, for the term of eighteen months; and it is further ordered and adjudged that said defendant be, and is hereby, remanded to the custody of the United States marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

72 THE UNITED STATES *against* PETER BREEN *et al.* } Convicted of Conspiracy.

Now, on this 28th day of September, 1892, the United States district attorney, with the defendant C. Sinclair and his counsel, James H. Hawley, Esqr., came into court. The defendant was duly informed by the court of the nature of the indictment found against him for the crime of conspiracy committed on the eleventh day of July, A. D. 1892; of his arraignment and plea of "Not guilty as charged in said indictment;" of his trial and the verdict of the jury on the 28th day of September, A. D. 1892, "Guilty as charged in the indictment." The defendant was then asked by the court if he had any legal cause to show why judgment should not be pronounced against him, to which he replied that he had none, and no sufficient cause being shown or appearing to the court—

Now, therefore, the said defendant having been convicted of the crime of conspiracy—

It is hereby considered and adjudged that the said defendant, C. Sinclair, be imprisoned and kept in the Detroit house of correction, at Detroit, Michigan, for the term of eighteen months; and it is further ordered and adjudged that said defendant be, and is hereby, remanded to the custody of the United States marshal for Idaho, to be by him delivered into said prison and to the proper officer or officers thereof.

73 On motion of defendants' attorneys ordered that the following bonds be fixed for each defendant, the same to operate as a supersedeas bond when papers on appeal are perfected. The defendant—

Geo. A. Pettibone in the sum of $4,000.

John Murphy in the sum of $3,000.

M. L. Devine in the sum of $3,000.
C. Sinclair in the sum of $3,000.

74 In the District Court of the United States for the Northern Division of the District of Idaho.

THE UNITED STATES
vs.
PETER BREEN *et al.*

I, the undersigned, clerk of the district court of the United States for the district of Idaho, do hereby certify that the foregoing papers, hereto annexed, constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of said district court this 28th day of Sept., 1892.

[SEAL.] A. L. RICHARDSON, *Clerk.*

(Endorsed:) In the district court of the United States for the northern division of the district of Idaho. Judgment-roll No. 1. The United States *vs.* Peter Breen *et al.* Register No. 1. Filed Sept. 28th, 1892. A. L. Richardson, clerk.

75 *Bill of Exceptions.*

In the District Court of the United States within and for the Northern Division of the District of Idaho, Special Term.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Be it remembered that this cause came regularly on for trial on the 3rd day of September, 1892, Fremont Wood, Esq., United States district attorney for the district of Idaho; F. M. Crossthwaite, Esq., special assistant United States district attorney, Albert Hagan, Esq., and W. B. Heyburn, Esq., appearing for the United States, and P. Reddy, Esq., and Messrs. Hawley & Reeves appearing for the defendants.

Whereupon the following proceedings were had, to wit: Each of the defendants demanded and required that he be tried separately and apart from each and every of his codefendants herein; which said demand and request was refused by the court; to which ruling the defendants and each of them duly excepted.

Whereupon the clerk, under the direction of the court, proceeded to draw a jury for the trial of the cause, and after challenges had been interposed for cause and twelve jurors being in the jury-box the prosecution and the defendants alternately interposed three peremptory challenges each to said jurors; and other jurors having been drawn to fill the panel and twelve jurors again being in the jury-box the defendants interposed a peremptory chal-

lenge to the juror J. W. Berryman; which said challenge was not allowed by the court on the ground that the defendants were entitled to three peremptory challenges only; to which said ruling the defendants and each of them duly excepted.

76 And the said J. W. Berryman was thereafter, by order of the court, sworn to try the cause, and acted as a juror on the trial of said cause.

There was no evidence given on the trial showing or tending to show that the writ of injunction mentioned and set forth in the indictment was served upon the defendants or either of them, or that the defendants or either of them had any notice or knowledge of the issuance of said writ.

After the evidence of the witnesses had been taken and before the arguments of counsel had been made to the jury the defendants submitted to the court the following instructions and requested that the same be given to the jury as part of the law of the case:

"It is only upon proof beyond reasonable doubt that the suit mentioned in the indictment was commenced, and that the defendants had notice or knowledge thereof, and that the injunction set forth in the indictment was issued and served upon the defendants, or that the defendants had notice or knowledge of the issuance and commands of said injunction and the agreement between the defendants to disobey the said injunction and to do the acts thereby prohibited that said acts become or constitute an offense against the United States.

"If you find from the evidence that the defendants did conspire to intimidate by force and threats of violence the employees of the Bunker Hill and Sullivan Mining and Concentrating Company working in and upon the mines of the said company with intent then and there and thereby to compel the employees of the said Bunker Hill and Sullivan Mining and Concentrating Company to abandon their work in and upon the mines, mill, and other buildings of the said mining company last mentioned, and to intimidate by force and threats of violence the officers and agents of the said Bunker Hill and Sullivan Mining and Concentrating Company, with the intent then and there and thereby, by means of said force and threats of violence, to compel the officers and agents of

77 said mining companies to discharge and dismiss from the employ of the said mining companies all employees other than such as were members of what is called the Miners' Union who were working either upon or within the mines of the said company or in the said company's mill and other buildings, and did in pursuance of said conspiracy commit the acts alleged, but that the evidence does not prove to your satisfaction and beyond a reasonable doubt that the said defendants had at the time of conspiring or agreeing to do said acts or at the time of doing the said acts notice or knowledge that the said injunction had been issued or would be issued, you should acquit the defendants.

"If you find from the evidence that the defendants conspired to do the acts recited in the last instruction, and that in pursuance of said conspiracy they committed the acts specified in said instruc-

tion, but at the time of entering into said conspiracy or doing said acts they had no notice or knowledge of the issuance of the said injunction or the commands therein contained, or that such an injunction would be issued, such conspiracy and such acts would not constitute the offense charged in the indictment or an offense against the United States, and you should acquit the defendants.

"Disobedience to an injunction order or a command therein implies a knowledge of the issuance and requirements of such order, and unless the prosecution have proved in this case to your satisfaction and beyond a reasonable doubt that the defendants had notice or knowledge of the issuance of the restraining order set forth in the indictment, or had notice or knowledge that it was about to be issued or would be issued, they cannot be guilty of disobeying said order of injunction."

"XXXI. From the fact that a certain act or acts may constitute a crime against the State of Idaho or is in itself or are in themselves criminal or unlawful, it does not follow that it is a crime against the United States.

78 "No acts of omission or commission, however criminal they may be in their nature, can constitute an offense against the United States unless declared by the laws of the United States to be such."

Which instructions and requests were and each of them was refused by the court; to which ruling the defendants and each of them duly excepted.

Defendants excepted to that part of instruction No. 4 given by the court which reads as follows:

"Another request which I refer to here of the defendants (No. 31) is as to crimes against the State of Idaho which are not to be considered in this trial. That is true. The testimony has shown, perhaps, that offenses have been committed, lives have been lost, which might be construed as a murder; property has been destroyed for which somebody might be held under the laws of the State for punishment. We have nothing to do with those offenses. You are not to hold these defendants for any offense of that kind"—

Upon the ground that the court had no power to instruct the jury that "the testimony has shown, perhaps, that offenses have been committed, lives have been lost, which might be construed as a murder; property has been destroyed for which somebody might be held under the laws of the State for punishment," or to determine from the evidence whether the crime of murder had been committed or not, and, inasmuch as the defendants were charged with committing those acts, that it was prejudicial to the defendants to be charged in the presence of the jury with being murderers, and on the ground that it is practically giving to the jury the opinion of the judge that the defendants had committed acts which amounted to murder.

The court should have given instruction numbered XXXI, as requested by the defendants, which stated the law correctly and which obviated the necessity of any remarks upon the part of the

79 court in the presence of the jury as to the character of the acts in question.

Defendants excepted to that part of instruction No. 10 given by the court which reads as follows:

"If, therefore, you find that any of these defendants or any persons with whom you may find they were associated as such conspiracy did, by the use of threats and intimidation or force against either the employees or officers or agents of said Bunker Hill and Sullivan Mining Company, cause such employees to cease work and quit the employment of said company, then such acts constituted and were in violation of the order of the court and come within the provisions of the statute"—

For the reason that it is contrary to the law, in that the defendants could not be guilty of violating the injunction unless they had knowledge or information of the existence of the order, and they could not have violated an order the existence of which they had no knowledge.

Defendants excepted to that part of instruction No. 11 given by the court which reads as follows:

"While it is charged that the unlawful object of the alleged conspiracy was to prevent by force and threats the laborers of the Bunker Hill and Sullivan Mining Company from working for said company, proof of the conspiracy for such purpose may extend back beyond the time when the alleged unlawful purpose was consummated, but to make testimony of such prior conspiracy available or competent it must appear that the conspiracy was not abandoned, but that its objects were held and continued in contemplation until such time as they could be accomplished, and the same instruction I give you concerning the testimony introduced as to the objects entertained by the Miners' Union prior to the issuance of the order on the 28th day of May last"—

80 For the reason that the suit in which the injunction was issued was not commenced until the 28th day of May, 1892, and that the defendants could not have conspired or intended to violate the order in question, and that they could not have conspired or intended to impede or obstruct the due administration of justice in the circuit court referred to before the case was commenced or at a time when no suit was pending, there being no evidence that they knew that any suit would be commenced or could be commenced.

Defendants excepted to that part of the instruction given by the court, numbered 14, which is in the words following:

"I will say to you in this case, if they did do it, they had no right to drive out by force, threats, and intimidations the employees of the Bunker Hill and Sullivan Company. If they did do that, even though they did not know of this order which has been referred to, still they violated the order, because they violated it while engaged in the unlawful acts. That is the law, well established, and hence it makes no difference whether they knew of the order or not, whether it has been served upon them or not"—

For the reason that it is contrary to law, in that the defendants could not have violated or intended to violate the order without knowledge of its existence.

Be it further remembered that on the 28th day of September, 1892, the jury impanelled in the above-entitled cause came into court and rendered the following verdict:

(Title of Court and Cause.)

We, the jury impanelled in the above-entitled cause, find the defendants George A. Pettibone, John Murphy, M. L. Devine, and C. St. Clair guilty as charged in the indictment, and we find the defendants C. W. Bushnell, W. H. Frazer, John Norton, J. W. Glass, Jos. Trainer, J. W. Wallace, J. W. Gillis, Frank M. Gray, Barney Reilly, and Frank Hyatt not guilty.

G. W. TOMER, *Foreman.*

81 Be it further remembered that said defendants, Geo. A. Pettibone, John Murphy, M. L. Devine, and C. St. Clair, on the said 28th day of September, 1892, moved for a new trial of said cause and to set aside the verdict herein, and now ask that the foregoing be settled as the bill of exceptions on said motion.

P. RUDDY AND HAWLEY & REEVES,
Att'ys for Def'ts.

82 *Instructions in Full as Given by the Court which are Added to the Foregoing Statement of Def'ts as an Amendment thereto and upon the Motion of the U. S. Attorney. Jas. H. Beatty, Judge.*

In the District Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES
vs.
PETER BREEN *et al.*, Defendants.

Charge to jury (part oral and part written).

GENTLEMEN OF THE JURY: I may join with counsel in congratulating you that this case is reaching its conclusion, and during its progress I have noticed the commendable attention you have given to it as it has been most ably developed by counsel upon both sides, and I have no doubt that you are prepared or will be prepared, after a fair consideration of the case, to do these defendants justice.

The fact that the case is one of unusual and general interest and one of great importance, not only to these defendants but to all the people, are potent suggestions to you why you should bring to bear in its consideration your best care, your best judgment, and regardless of any bias or prejudice, any feeling of sympathy or interest either for or against these defendants, endeavor to arrive at a proper conclusion.

I will not undertake in the instructions which I give you to refer to all the questions of law which counsel have referred to and which they have from time to time stated the court would give you.
83 I did prepare substantially the instructions that I considered applicable to the case. Since preparing those, or at least arranging them in my mind, I have received from counsel on both sides numerous requests which they desire to have given, and to some extent I will add to what I had first proposed to give you and give you some of the instructions which counsel have requested, but I will endeavor in giving these instructions to arrange them in what I deem a logical order in order that you may have the law fairly and clearly before you.

No. 1. The law which must govern your deliberations you must receive from and follow as given you by the court; you cannot disregard it even if you believe it is erroneous. If the court makes a mistake and you, by following it, should do an injustice, no responsibility will rest upon your shoulders, but all errors which the court makes and which result in any prejudice to the defendants must be corrected by another court of appeal.

In the course of the argument it is almost impossible for counsel to present the facts without some reference to the law, and sometimes counsel state as law what the court does not give as law, and you will therefore try to bear in mind only what is said to you by the court and not what counsel may have stated as the law.

As to the facts, gentlemen, and the credability of the witnesses you are the sole and exclusive judges, and should I during the course of this charge refer to any of the evidence I shall not presume to state to you what has been established by it, but leave that responsibility entirely with you, and this is the substance of your duty.

It is for you to say whether the witnesses are truthful or not. You are not bound to adopt as truth what a witness says if convinced it is false. To properly weigh the testimony of the witnesses you must consider their interest, their motives, the results to them, whether they are testifying for or against their friends or enemies, their bearing and demeanor upon the witness stand. In this
84 connection I will refer to some of the requests asked by the defendants. I will say, gentlemen, to you that many of the requests which you have asked are almost duplicates or in substance what I had myself prepared, but I will, nevertheless, read some of them because you have requested them.

The court instructs the jury (No. XV, defendants') that they are the sole judges of the facts in this case and of the credit to be given to the respective witnesses who have testified, and in passing upon the credibility of such witnesses they have a right to take into consideration their prejudices, motives, or feelings of revenge, if any such have been proven or shown by the evidence in the case; and if the jury believe from the evidence that any witness or witnesses have knowingly and willfully testified falsely as to any material fact or point in this case the jury are at liberty, unless corroborated

by other credible evidence, to disregard the testimony of such witness or witnesses entirely.

(Defendants' No. 19.) The jury have no right to disregard the testimony of any of the defendants who have been witnesses on their own behalf on the ground alone that they are defendants and stand charged with the commission of a crime. The law presumes the defendants to be innocent until they are proved guilty, and the jury should fairly and impartially consider their testimony, together with all the other evidence in the case; to which I add as to these witnesses you will bear in mind the interest they have in the case. The same instruction I will give you as to some other witnesses before I get through.

(Defendants' No. 20.) The defendants request the court to instruct the jury that when the verbal admission of a person charged with crime is offered in evidence the whole of the admission must be taken together, as well that part which makes for the accused as that which may make against him, and if part of the statement which is in favor of the defendants is not disproved and is not apparently improbable or untrue when considered with all the
85 other evidence in the case, then such part of the statement is entitled to as much consideration from the jury as any other part of the statement.

That refers to statements of the defendants that are put in testimony by the prosecution. You are entitled to consider their whole statement together.

Defendants' No. 44. If you find from the evidence in this case that any witness, for hire, deliberately ingratiated himself into the confidence of others for the purpose of betraying that confidence, and while pretending to be a friend he, for pay, was seeking by every means in his power to obtain evidence as a means to accomplish the downfall and secure the conviction of crime of those for whom he professed such friendship, you should scrutinize with care the testimony of such a witness.

Mark you, gentlemen, that instruction is not that you should disbelieve a witness, but that you must scrutinize that testimony on the ground that he may be presumed to have some interest in his testimony and in testifying as he does.

Now, in connection with that witness who is referred to by that instruction and as to other witnesses, the defendants themselves and the witnesses for the prosecution who may have an interest in this one way or another, it is your duty to consider all those facts and consider whether or not they may be interested in order to arrive at the conclusion as to whether they are telling just what they know or not; but after all, gentlemen, what you desire to arrive at is the truth, it matters not from what witness it comes, whether from the mine-owners, whether from a detective, or from any class of citizens or witnesses, the main thing you desire to get at is the truth, and in order to arrive at that, while considering the interest they may have in the case, you must take into consideration their connection with the other facts, circumstances, and sur-

86 roundings of the case, and by putting all together endeavor to reach the truth regardless of the source from whence it may come.

No. 2. In the trial of civil causes the jury must find a verdict according to the mere preponderance of the evidence—that is, in favor of the party whose evidence is the strongest, and even if it be in the slightest degree stronger than his opponent's he is entitled to the verdict; but in a criminal cause you cannot find the defendant guilty upon a simple preponderance of testimony against him, but the law demands that the evidence must be such as to satisfy you as to his guilt beyond a reasonable doubt.

On the other hand, however, this does not mean you must be convinced to a degree of absolute certainty or to such a degree as will exclude all doubt. As a rule, crimes are not committed openly in the searching light of noonday, but more frequently in privacy, under the cover of darkness and without the range of human observation, so that they must most generally be shown by such circumstantial evidence as necessarily excludes the probability of proving them beyond any doubt or to a degree of absolute certainty. The law does not fix either extreme as the standard of your judgment, but simply says you must be satisfied beyond a reasonable doubt. What, now, is a reasonable doubt? Courts have time after time from the famous case tried in Massachusetts many years ago attempted to define "a reasonable doubt," and even to this day it may be hard to understand just how far a jury must go; but I give you this definition of it: Such a doubt as that which naturally and without effort arises in the mind from the unsatisfactory nature of the testimony. It is such a doubt or such a state of mind as would cause a prudent man to hesitate, to consider, to inquire before being willing to act in some important matter in which he is personally and much interested; but it is not a mere arbitrary doubt or whim or vagary or fancy wrought up in the mind through some imaginary state
87 of facts. It is not a question of what may or might have been, but what is. You are not to go outside of the testimony and by indulging in some fancy that this or that may have occurred—build up some theory which is not supported by the actual evidence given in the case. Such a doubt must grow out of the evidence, but from the imagination never.

While your oath as jurors imposes upon you weighty obligations, it does not demand you to entertain any doubt you would not if not under oath. It does not require you to doubt as jurors when as men you believe. Consider, therefore, the testimony and let it have its natural effect and weight upon your minds, unswerved by any bias, sympathy, or prejudice, and follow then the dictates of your best judgment. If that persuades you of the defendants' guilt beyond such reasonable doubt as I have attempted to define you should so find, but if you still have such a doubt you should acquit.

No. 3. The burden of proof is upon the prosecution in all cases. All the material facts which constitute the offense charged must be proven by the prosecution to your satisfaction beyond such reasonable doubt; otherwise the defendants must be acquitted. Now, this

instruction, gentlemen, you will understand as applying to all the subsequent instructions—that is, that every material fact must be proven beyond a reasonable doubt—and I will not repeat that language with each subsequent instruction as to the facts that are to be established, and those facts I will refer to further on in the testimony.

No. 4. The fact that the defendants are accused of a crime by indictment is not to be considered as any evidence of their guilt; but, on the contrary, the presumption of the law is that they are innocent until they are proven guilty. Proof of their guilt must be by such evidence as satisfies you thereof beyond a reasonable doubt, and such presumption of innocence follows them throughout the progress of the case until proven guilty by such evidence. Neither
88 can you convict upon a mere suspicion that the defendants are or may be guilty, however strong the suspicion may be, but the conviction must be based upon the evidence alone; nor can you adopt unreasonable theories or positions to justify a conviction.

In reference to No. 14 of the defendants' requests, that jurors' personal opinions must not be considered, that is true. Your personal opinions as to whether there has been an offence committed *is* not to be considered, as a matter of course. You must consider and make up your mind only from the testimony in the case.

(Defendants' 18.) Another request of defendants which I give you is this: that the defendants are not required to testify in the case, and they are not to be prejudiced by the fact that they do not testify. The reason of that rule is this, gentlemen: that the prosecution is required to make out a case against the defendants, and unless it does the defendants are under no obligations to testify, and you are not to be prejudiced against the defendants from the fact they have not gone upon the stand; but when they go upon the stand, as a matter of course, their testimony is to be considered like the testimony of any other witness, bearing in mind the interest they may have in the case.

(Defendants' No. 26.) The defendants have also requested me to instruct you that you must not guess at the verdict. Of course, that follows in all cases, and I hardly deem it necessary to instruct a jury of your intelligence that that is necessary. Of course, you will not guess at your verdict nor by any means disregard the testimony, but base your verdict alone upon it.

Another request which I refer to here of the defendants (No. 31) is as to crimes against the State of Idaho, which are not to be considered in this trial. That is true. The testimony has shown, perhaps, that offences have been committed. Lives have been lost, which might be construed as a murder; property has been destroyed, for which somebody might be held under the laws
89 of the State for punishment. We have nothing to do with those offences; you are not to hold these defendants for any offence of that kind.

Defendants ask instruction No. 43. One of the defences interposed by several of the defendants in this case is what is known in law as an alibi—that is, that the defendants were at another place

at the time of the commission of the crime—and the court instructs the jury that such a defense is as proper and legitimate as any other, and all the evidence bearing upon that point should be carefully considered by the jury, and if, in view of all the evidence, the jury have any reasonable doubt as to whether the defendants were in some other place when the crime was committed they should give the defendants the benefit of the doubt.

The defendants are not required to prove that defense beyond a reasonable doubt to entitle them to an acquittal. It is sufficient if the evidence upon that point raises a reasonable doubt as to his presence at the place the crime was committed at the time charged. I pass now to my instruction No. 5:

No. 5. During the progress of this case or introduction of the evidence a number of matters have been referred to, questions have been asked which were denied, and different matters have been brought in which do not properly belong to the case and which I will instruct you to disregard. Now, the design of the law in permitting counsel to address you is that they may aid you in reaching the truth and the proper conclusion. That is the object of an argument by counsel to a jury, and not to prejudice your minds in any way or improperly bias you; but it sometimes happens that counsel, in their zeal to advance the cause they represent, get beyond the record and refer to matters which do not belong to it and of which the jury should not know or hear or consider. When they do that it is the duty of the court to instruct the jury what does and what does not belong to the record.

Now, there are several matters here that have been referred to, and with a great deal of persistency, and such as might mis-
90 guide you—might lead you away from the real issues in this case—and one of them is as to the cause of the original trouble that existed between the mine-owners and miners' union or the miners or perhaps these defendants. It may seem strange to you, gentlemen, that we have nothing to do with that, but we have not, because the original cause of the trouble between the mine-owners and miners is not an issue here, and the court has endeavored to keep it out all the way through; and yet to some extent such testimony has been placed before you, but only partially, however. Now, I say to you that you are not to consider that matter at all. You do not know what the truth is as to that matter, and you do not know it for the reason that you have no right to know it, and anything that has been said before you upon that trouble or the original cause of the trouble you should disregard; you have nothing in the world to do with that.

As to the Mine Owners' Association, testimony has been allowed upon that for this reason: to show that the parties who belonged to that may have had prejudice against these defendants, and it is your right to know whether a witness who has testified is prejudiced against the defendants with a view of weighing his testimony, and that is all that the Mine Owners' Association has to do with this case. All you have to do with it, when a witness belongs to the Mine Owners' Association you have a right to know that, because

it does appear that there was some conflict between the Mine Owners' Association and these defendants, and you must know that in order to weigh their testimony and give it such credence as it is entitled to. That is the reason such testimony was introduced.

A great deal has been said about the Law and Order League. While, so far as I recollect, there is no testimony before you as to what the Law and Order League is, if there is anything in the testimony concerning the Law and Order League, whatever it may be, which shows to you that the members of that league had a prejudice against these defendants you have a right to consider it in weighing their testimony.

91 The defendants have asked me to give their instruction No. 21, which is in these words: The jury are instructed that it would be highly improper and wrong for them to regard any statements of the prosecuting attorneys that are not based on the evidence in the case, and if any such have been made they are not entitled to any weight whatever. Gentlemen, I repeat that instruction to you. If any statements have been made by the prosecuting attorneys or by the counsel for the defense which are not based upon the evidence you will disregard it. That applies as much to the attorneys for the defence as to the attorneys for the prosecution.

Now, then, gentlemen, upon that general instruction you will be careful to disregard any matter or thing that has been said or brought in here in any way that does not bear upon the issues in this case. I now proceed to tell you what the issues are and what you are here to try, which is the important part of my instructions.

No. 6. The indictment charges that these defendants with others entered into a conspiracy to commit an offence against the U. S. by obstructing and impeding the due administration of justice in the U. S. circuit court for the district of Idaho; that the particular facts and acts constituting such offence were in substance that on the 28th day of May, 1892, in an action pending in said court in which the Bunker Hill and Sullivan Mining Company was complainant and the Miners' Union of Wardner and others were defendants a restraining order was issued by said court, and I did intend to read that order to you, but I will not because it has been read so often, but it was to restrain all the defendants in that suit or any other person from interfering with the laborers on the Bunker Hill and Sullivan Mining Company by use of threats or intimidation or force. Then the indictment further proceeds to charge in substance that afterwards and while such order was in force the defendants by use of threats and intimidation did compel such employees to cease work; that such acts were in violation of such order,

92 and in so violating the order the defendants were obstructing and impeding the due administration of justice in the U. S. court.

No. 7. The indictment is based upon sections 5399 and 5440 of the Revised Statutes of the United States. Sec. 5440 I read to you first, which is (reads): "All the parties to such conspiracy shall be liable," etc.; the penalty is immaterial to you. Sec. 5399 is this

(reads): "or impede the due administration of justice therein shall be punished as provided by that statute."

Under those sections there are three propositions which are asserted by them and by this indictment which must be established by the evidence. The first is that there was a conspiracy formed by two—for the statute says two or more—formed by two or more persons to commit an offence, any offence whatever, against the United States, and that the defendants were members of such conspiracy. The second is that one or more of such persons who composed such conspiracy did some act to carry out the the conspiracy or to commit the offence for which the conspiracy was organized. The third is that such an offence consisted in the use of force or threats to obstruct or impede the due administration of justice in the United States circuit court of this district.

No. 8. Now, as to the conspiracy. First, was there such a conspiracy formed as is contemplated by the statutes? Did the defendants belong to it, and what evidence must you have to reach such a conclusion? The statute includes any combination, association, or cooperation together of two or more persons for the purpose of committing some offence against the United States. Conspiracies being criminal and for criminal purposes, their organizations, constitutions, plans, and agreements are not usually made public, but great care is observed to keep them secret. It would be unreasonable,
93 therefore, to demand that such facts must be established by positive or direct proof, but they may be shown by circumstantial evidence, just as most other crimes may be. It is not necessary to show that the parties to a conspiracy actually met together and in a formal manner or terms agreed to enter into it. The essence of a conspiracy is the combination, the bending, agreeing, or working together, the common design, the concert of action by the parties, and any evidence which tends to show such facts is competent. It may be shown by the different acts of different persons at different times and places, and when such acts, considered together, if unexplained, lead to the conclusion that they are all parts of one scheme and together lead to the accomplishment of the unlawful object, they establish the conspiracy and their actors as members of it. In other words, you are not required to enter into the minds of the conspirators to discover their real intentions or designs, but these, as in all other criminal cases, may be reached through their actions. Men are presumed to intend what they actually do, but, on the contrary, acts which would indicate the commission of a crime may be explained and shown to be innocent of wrong intent. It is in effect charged in this case that a conspiracy was formed for the purpose of violating the order of the court referred to. If, now, the acts shown to have been done by the different defendants and any other persons with whom you may find they were associated, when all put together were such as led to the violation of such order, that such acts appeared under all the circumstances to belong to and constitute one general scheme, to constitute the common object and resulted from concert of action, you

would be justified in concluding the conspiracy was formed and for such purpose.

Of course, I say here, gentlemen, in addition, if you do not find a conspiracy was formed—no conspiracy existed—that would end this case. If you find that one did exist, then the next proposition is the one I now read to you.

No. 9. Gentlemen, passing now to the second of three heads to which I have referred, if you find such a conspiracy existed and that any member of it did any act to effect the object for
94 which it was created, then each and every member is liable.

The statute expressly so provides, and applying it to this case, if you find that a conspiracy existed and its object or one of its objects is the performance of some unlawful act or some wrong and any member, whether a defendant or not, did any act or thing to carry into effect the unlawful object, then all the members are thereby bound, but what any member may have done or said after the conspiracy ended is not evidence against nor does it bind any other member than himself.

No. 10. The third proposition, then, under this statute and indictment is that the conspiracy was organized for the purpose of impeding and obstructing the due administration of justice by violating the said order of the court through threats and force.

You are instructed that any such interference with any order or process of the court that prevents its free and full operation constitutes an offence under this statute. The unreversed orders and judgments of the court are as sacred as the law itself. They are the law as construed by a power even higher than that which creates it and they must be obeyed, and any orders made by a court of the United States, so long as that Government has power, will be enforced, and when the time comes that the orders of the court cannot be obeyed or when they come to be recklessly disregarded, then we come to a state of affairs equal only to anarchy.

If, therefore, you find that any one of these defendants or any persons with whom you may find they were associated as such conspiracy did, by the use of threats and intimidations or force against either the employees or the officers or agents of said Bunker Hill and Sullivan Mining Company, cause such employees to cease work and quit the employment of said company, then such acts constituted and were in violation of the order of the court and come within the provisions of the statute.

95 No. 11. Proof of the organization or extent of a conspiracy is not limited to the exact time when the acts carrying out its object were committed, but it may extend to any prior time consistent with the object for which the conspiracy was formed. While it is charged that the unlawful object of the alleged conspiracy was to prevent by force and threats the laborers of the Bunker Hill and Sullivan Mining Company from working for said company, proof of the conspiracy for such purpose may extend back beyond the time when the alleged unlawful purpose was consummated, but to make testimony of such prior conspiracy available or competent it must appear that the conspiracy was not abandoned,

but that its objects were held and continued in contemplation until such time as they could be acomplished; and the same instruction I give you concerning the testimony introduced as to the objects entertained by the Miners' Union prior to the issuance of the order on the 28th day of May last. Such union is not unlawful so long as it seeks by lawful means the benefit or advancement of its members, but the prosecution have a right to show that it had unlawful objects and among them the expulsion by force from the country — the non-union miners. If the testimony shows such Miners' Union entertained such unlawful purpose, that such purpose continued, and that it included, among others, the employees of the Bunker Hill and Sullivan Mining Company, and it was finally enforced against such employees, and that the defendants were members of or co-operated with such Miners' Union carrying out such purpose, then such testimony may be considered by you in aiding you to reach a conclusion as to the extent of the conspiracy as alleged; but, on the contrary, if you do not find any connection between the alleged objects of the said Miners' Union and the occurrences that took place at the properties of the Bunker Hill and Sullivan Mining Company about the 11th to the 13th of July last, you will not consider such testimony.

No. 12. To hold a party responsible as a member of a conspiracy it is not necessary that he should have joined in the begin-
96 ning. If at any time he becomes a member of it or with a full knowledge of its object or design, does any act or advises, counsels, or aids in carrying out its unlawful purpose he becomes a fellow conspirator and is liable for all done by it. Concurrence, without absolute proof of his agreement to concur, binds him. Neither is it necessary that he must be present when the unlawful purpose of the conspiracy is consummated. If he is a member or aids by his advice or counsels or encourages it, though absent when the unlawful act is done, he is as much bound as though present and himself doing such act.

I will give you No. 46, asked by the defendants.

Evidence merely showing the presence of a defendant on the occasion of the conspiracy, or at the time of acts done to effect its object or silent knowledge of it, is not sufficient to make a person guilty. There must be active participation in the conspiracy or its work. There must be some word or act. The person charged must incite, procure, or encourage the act. He must lend aid or encouragement. A purely passiv eacquiescence is not sufficient to implicate him.

No. 13. If you find a conspiracy existed you must determine from the evidence who its members were, and you are not to infer from anything in these instructions that because a man belongs to the Miners' Union he is also a member of the conspiracy or that he must have been a member of the union to belong to the conspiracy. On the contrary, all persons who took any part or aided, advised, or counselled in carrying out the unlawful objects of the conspiracy, whether members of the Miners' Union or not, are members of the conspiracy.

No. 14. I come now, gentlemen, to another proposition of law which is important in this case and which has been discussed very much by counsel. It is this: that if one is engaged in doing some criminal or unlawful act, and while so engaged unintentionally does some other unlawful or criminal act, he is held responsible
97 for the wrong he actually commits, even though he did not intend to do it. It is laid down by an eminent criminal law writer that "when persons combine to do an unlawful thing, if the act of one, proceeding or growing out of the common purpose, terminates in a criminal result, though not the particular result meant, all are liable." To illustrate this: If parties enter into a conspiracy to burn a dwelling and while in the act of doing so they unintentionally kill a person they are all guilty of murder, although they did not intend to commit murder. In another case which has been referred to by counsel on the argument here, where some strikers while unlawfully attempting to interfere with the operations of a railroad in the hands of a receiver, without intending any disrespect to the court or to violate any of its orders, they were held and punished for contempt, simply because it was committed while they were attempting to do another unlawful act.

Now, it is lawful for all men to give or seek employment to or of whom, when, and as they will, and it is unlawful for any men or association of men by force, threats, or intimidation of any kind to interfere with the free exercise of every man's will in such matters. If, now, the defendants belonged to any conspiracy, association, or combination which had for its object, or one of its objects, the preventing by such force, threats, or intimidation other laborers from working, including those in the employ of the said Bunker Hill and Sullivan Mining Company, and they attempted or succeeded by such means in carrying out such purposes it was unlawful, and in doing such unlawful act they violated the order of the court and committed the offence charged against them, and this is true even though they did not have the order in their minds, even though it had not been served upon them or they did not know of it, and are responsible for what they did. There has been a great deal said upon that, gentlemen. I do not wish you to misunderstand the law upon that or get any misrepresentation in the record. The
98 simple amount of it is that when parties are engaged in any unlawful act, no difference what that unlawful act may be, or any criminal act, if while doing that they commit some other offence which they did not intend, they are guilty of the offence they actually committed. I will say to you in this case, if they did do it, they had no right to drive out by force, threats, and intimidation the employees of the Bunker Hill and Sullivan Company. If they did do that, even though they didn't know of this order which has been referred to, still they violated the order because they violated it while engaged in an unlawful act. That is the law well established, and hence it makes no difference whether they knew of the order or not, whether it had been served upon them or not.

No. 15. It often happens in a trial of a case that more or less testimony will creep in that should be omitted if the court could

always anticipate the answers. I desire in this connection to refer to some testimony which has been introduced and to explain its objects. The testimony of the fight at Gem and Frisco is not important further than it may throw light on the general purposes and objects of the defendants and those associated with them. If it shows to your satisfaction that what occurred there and at Wardner were all parts of one general scheme and for the same general purpose and by the same combination of men, it is testimony which you can consider only for the purpose of showing the existence of a conspiracy, and the same instruction applies to any testimony of any offences or overt acts committed elsewhere than at Wardner and vicinity. They are not to be considered to the prejudice of defendants or for any other purpose than to throw light upon the question of conspiracy and to show defendants' interest in the Wardner affair.

That is, gentlemen, if there were murders, for instance, committed at Gem or property destroyed, you are not to hold defendants responsible for that, and no testimony about that occurrence at Gem and Frisco is to be considered except for the one single purpose of showing whether or not it was a part of one gen-
99 eral conspiracy and then whether that conspiracy was carried along to the affairs at Wardner and was a part of one general transaction. That is the only bearing it can have in this case, and you are not to be prejudiced by any incidents of the disturbances that occurred at that place.

The defendants upon that subject have asked instruction No. 38, which is in effect the same thing and which I think I have given you, but I will read their instruction and I give it as part of their instruction. Evidence was introduced on the trial of this cause relating to acts and conversations of certain parties concerning the Helena and Frisco mill and premises, and also the Gem mill and town of Gem, and also relating to the driving or sending away of employees of the said Helena and Frisco Company and employees engaged at the Gem mill.

You are instructed that said matters shown by the said evidence do not constitute an offence against the United States of the offence charged in the indictment, for there is no evidence that there was any suit pending in any court of the United States of or concerning any of such matters, or that such acts or doings were prohibited by any court of the United States, or that they impeded or obstructed the due administration of justice in the circuit court of the United States mentioned in the indictment or any other court of the United States.

The evidence was admitted to show that the defendants had entered into other conspiracies similar to the one charged in the indictment, but since the evidence has been closed it appears, as above stated, that there is no evidence to show that said acts were prohibited by any injunction or other order of any court of the United States or any court, and, inasmuch as there is a broad difference between an act prohibited by law or the order or a court and an act which is not prohibited by law or the order of a court,

you are instructed that said acts and doings concerning said Helena and Frisco and said Gem mills and said employees do not constitute an offence against the United States so far as shown by the evidence. That, gentlemen, is in harmony with what I
100 have already given you, and, as I said before, it was introduced simply for the purpose of showing that that was a part of one general conspiracy. Whether it was or not is for you to judge.

101 *Order Overruling Motion for New Trial.*

Be it remembered that upon this 28th day of September, A. D. 1892, the defendants present for settlement and allowances their proposed statement upon motion for a new trial; to which, upon motion of counsel for the United States, the instructions in full as given by the court, including both those oral and written, are added as an amendment, and said statement as thus amended is now settled and allowed as the statement upon said motion for new trial.

Whereupon said motion for new trial is by the court overruled; to which ruling of the court the defendants take their exception.

JAS. H. BEATTY, *Judge.*

102 Endorsed as follows:

No 1. In the district court of the United States in and for the northern division of the district of Idaho. The United States *vs.* Peter Breen *et al.* Bill of exceptions and order overruling motion for new trial. Filed Sept. 28th, 1892. A. L. Richardson, clerk.

103 *Assignment of Errors.*

In the District Court of the United States for the District of Idaho.

UNITED STATES
vs.
PETER BREEN, GEO. A. PETTIBONE, MICHAEL L. DEVINE, JOHN MURPHY, and C. SINCLAIR.

Now comes *the* Geo. A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, appellants, by their attorneys, counselors, and solicitors, P. Reddy and Hawley & Reeves, and particularly specifies the following as the errors upon which they will rely and which they will urge upon their appeal in the above-entitled cause.

1st.

That the district court of the United States for the district of Idaho erred in holding that the defendants and appellants were not entitled to separate trial under the charge and indictments against them.

2nd.

The said court erred in holding that the defendants and appellants were entitled to only three peremptory challenges to jurors called to try the cause.

3rd.

The court erred in holding that J. W. Berryman, one of the jurors called and empaneled to try said cause, was a competent juror, being challenged by appellants.

4th.

The court erred in refusing to give to the jury the instructions asked by the defendants and appellants and fully set out in the bill of exceptions in this case now on file.

5th.

The court erred in refusing to give instruction No. 31
104 (XXXI) as requested.

6th.

The court erred in using the following statement in the presence of the jury: "The testimony has shown, perhaps, that offenses have been committed, lives have been lost which might be construed as a murder, property has been destroyed for which somebody might be held under the laws of the State for punishment."

7th.

The court erred in giving to the jury instructions which were at the time excepted — by the defendants and appellants and fully set out in the bill of exceptions on file in this case.

8th.

The court erred in holding that the defendants could be convicted and were guilty of the offense charged against them, although they did not know that the order of the court they were charged with violating had been issued.

9th.

The court erred in refusing to grant the defendants and appellants a new trial on their motion made herein.

In order that the foregoing assignment of errors may be and appear in — of record the appellants present the same to the court and prays that such disposition be made thereof as — in accordance with law and the statutes of the United States in such — made and provided.

All of which is respectfully submitted.

P. REDDY, HAWLEY & REEVES,
Solicitors and Counsel for Appellants.

(Endorsed:) No. 1. In the district court of the United States for the northern division of the district of Idaho. The United States *vs.* Peter Breen *et al.* Assignment of errors. Filed Oct. 8th, 1892. A. L. Richardson, clerk.

105 *Petition for Order Allowing Appeal.*

In the United States District Court of the Ninth Judicial District in and for the State of Idaho.

THE UNITED STATES
vs.
PETER BREEN, GEO. A. PETTIBONE, JOHN MURPHY, MICHAEL L. DEVINE, C. ST. CLAIR.

The defendants Geo. A. Pettibone, John Murphy, Michael L. Devine, and C. St. Clair feeling themselves aggrieved by the judgment of conviction made and entered by said court on the 28th day of Sept., 1892, whereby it was adjudged that the defendant Geo. A. Pettibone should be confined in the house of correction at Detroit for the term of two years, and the said Michael Devine should be confined in said prison for the term of eighteen months, and the said John Murphy should be confined in said prison for the term of fifteen months, and the said C. St. Clair should be confined in said prison for the term of eighteen months, now comes the said defendants above named, by P. Reddy and Hawley & Reeves, their attorneys, counselors, and solicitors, and petition said court for an order allowing these defendants to prosecute an appeal from the judgment of conviction herein to the honorable United States Supreme Court, sitting at Washington, D. C., and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which defendants shall give and furnish upon such appeal, and that upon giving such security all proceedings be staid in this court until said appeal shall be heard.

And your petitioners will ever pray.

P. REDDY, HAWLEY & REEVES,
Attorneys and Solicitors for Defendants.

(Endorsed:) No. 1. In the district court of the United States for the northern division of the district of Idaho. The United States *vs.* Peter Breen *et al.* Petition for allowance of appeal. Filed Oct. 10th, 1892. A. L. Richardson, clerk.

106 *Order Granting Appeal.*

In the District Court of the United States for the District of Idaho, Northern Division.

UNITED STATES
vs.
PETER BREEN, GEORGE A. PETTIBONE, JOHN MURPHY, MICHAEL L. DIVINE, C. ST. CLAIR, *et al.*

On motion of P. Reddy and Hawley & Reeves, counsel for defendants and appellants, it is ordered that an appeal to the United States Supreme Court from the judgment of conviction heretofore filed and

entered herein and from the order overruling a motion for a new trial be, and the same is hereby, allowed, and that a certified transcript of the statement on motion for new trial as settled, exhibits, records, and all proceedings herein be forthwith transmitted to said United States Supreme Court, and upon a bond being given and approved by the undersigned judge, or in his absence by the clerk of said court, as follows, to wit, by defendant George A. Pettibone, in the sum of four thousand dollars, or in lieu of such bond a deposit with said clerk of the sum of three thousand dollars in lawful money of the United States, and by each of the other defendants, John Murphy, Michael L. Devine, and C. St. Clair, a separate bond for each for the sum of three thousand dollars, or in lieu of such bond a deposit with said clerk of the sum of two thousand dollars, lawful money of the U. S., for each of said last three named defendants so giving such bond or making such *such* deposits, shall be released and execution of judgment suspended until the further order of the court or judge thereof, such bonds, if given, to be executed by good and sufficient sureties.

JAS. H. BEATTY, *Judge.*

Dated October 10th, 1892.

107 (Endorsed:) No. 1. In the district court of the United States for the district of Idaho, northern division. United States *vs.* Peter Breen *et al.* Order granting appeal. Filed Oct. 10th, 1892. A. L. Richardson, clerk.

107½ "*Citation.*"

UNITED STATES OF AMERICA, } *ss:*
District of Idaho, }

To Fremont Wood, attorney for the United States and United States district attorney for the district of Idaho, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 17th day of October, A. D. eighteen hundred and ninety-two, pursuant to an order allowing an appeal entered in the clerk's office of the district court of the United States for the district of Idaho from a judgment of conviction entered on the 28th day of September, 1892, in that certain action wherein The United States was plaintiff and Peter Breen, George A. Pettibone, John Murphy, Michael L. Devine, and C. St. Clair, *et al.* were defendants, and show cause, if any there be, why the judgment of conviction rendered against said defendants and appellants, as in said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Beatty, United States district judge for the ninth judicial district of the State of Idaho.

JAS. H. BEATTY, *Judge.*

Da. Oct. 10, 1892.

(Endorsed:) No. 1. United States district court, district of Idaho. United States *vs.* Peter Breen *et al.* Citation on appeal. Filed Oct. 10th, 1892. A. L. Richardson, clerk. Service of the within by copy admitted this 10th day of Oct., 1892. Fremont Wood, U. S. attorney.

108 *Assignment of Errors.*

In the District Court of the United States for the District of Idaho.

THE UNITED STATES
vs.
PETER BREEN, GEORGE A. PETTIBONE, MICHAEL L. DEVINE, JOHN MURPHY, and C. SINCLAIR, Defendants.

Now come the defendants George A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, by their attorneys, counselors, and solicitors, P. Reddy and Hawley & Reeves, and particularly specify the following as the errors upon which they will rely and which they will urge upon their application for writ of error in the above-entitled cause.

I.

The court erred in denying the defendants' motion to quash the indictment upon the grounds stated in said motion, namely:

1. That the court has no jurisdiction of the subject-matter of said indictment or the offense charged in said indictment and no jurisdiction of the person of the said defendants or any of them.

2. That the said grand jury had no jurisdiction, power, or authority to examine into the offense alleged in said indictment or to hear evidence of or concerning the same or to find or present to this court any indictment against said last-named defendants or any of them for or on account of the matters and things charged in said indictment.

II.

The court erred in overruling defendants' demurrer to the indictment upon the grounds stated in said demurrer, viz:

That the grand jury by which it was found had no legal authority to inquire into the offense charged.

2. That this court has no jurisdiction over the offense charged in said indictment.

3. That the facts stated in said indictment do not consti-
109 tute a public offense against the United States or under the laws of the United States.

III.

That the district court of the United States for the district of Idaho erred in holding that the defendants were not entitled to separate trials under the charge and indictments against them.

IV.

The court erred in holding that the defendants were entitled to only three peremptory challenges to jurors called to try the cause.

V.

The court erred in holding that J. W. Berryman, one of the jurors called and empanelled to try said cause, was a competent juror, having been challenged peremptorily by the defendants.

VI.

The court erred in refusing *the* give the following instruction to the jury requested by the defendants:

"It is only upon proof beyond reasonable doubt that the suit mentioned in the indictment was commenced, and that the defendants had notice or knowledge thereof, and that the injunction set forth in the indictment was issued and served upon the defendants, or that the defendants had notice or knowledge of the issuance and commands of said injunction and the agreement between the defendants to disobey the said injunction and to do the acts thereby prohibited that said acts become or constitute an offense against the United States."

VII.

The court erred in refusing to give the following instruction to the jury requested by the defendants:

"If you find from the evidence that the defendants did conspire to intimidate by force and threats of violence the employees of the Bunker Hill and Sullivan Mining and Concentrating Company working in and upon the mines of the said company with intent then and there and thereby to compel the employees of the said Bunker Hill and Sullivan Mining and Concentrating Company to abandon their work in and upon the mines, mill, and other buildings of the said mining company last mentioned, and to intimidate by force and threats of violence the officers and agents of the said Bunker Hill and Sullivan Mining and Concentrating Company with the intent then and there and thereby, by means of said force and threats of violence, to compel the officers and agents of said mining compan*ies* to discharge and dismiss from the employ of the said mining compan*ies* all employees other than such as were members of what is called the Miners' Union who were working either upon or within the mines of the said company or in the said company's mill and other buildings, and did in pursuance of said conspiracy commit the acts alleged, but that the evidence does not prove to your satisfaction and beyond a reasonable doubt that the said defendants had at the time of conspiring or agreeing to do the acts or at the time of doing the said acts notice or knowledge that the said injunction had been issued or would be issued, you should acquit the defendants."

VIII.

The court erred in refusing to give the following instruction to the jury requested by the defendants:

"If you find from the evidence that the defendants conspired to do the acts recited in the last instruction, and that in pursuance of said conspiracy they committed the acts specified in said instruction, but at the time of entering into said conspiracy or doing said acts they had no notice or knowledge of the issuance of the said injunction or the commands therein contained, or that such an injunction would be issued, such conspiracy and such acts would not constitute the offense charged in the indictment or an offense against the United States, and you should acquit the defendants."

111

IX.

The court erred in refusing to give the following instruction to the jury requested by the defendants:

"Disobedience to an injunction order or a command therein implies a knowledge of the issuance and requirements of such order, and unless the prosecution have proved in this case to your satisfaction and beyond a reasonable doubt that the defendants had notice or knowledge of the issuance of the restraining order set forth in the indictment, or had notice or knowledge that it was about to be issued or would be issued, they cannot be guilty of disobeying said order of injunction."

X.

The court erred in refusing to give the following instruction to the jury as requested by the defendants:

"XXXI. From the fact that a certain act or acts may constitute a crime against the State of Idaho or is in itself or are in themselves criminal or unlawful, it does not follow that it is a crime against the United States."

XI

The court erred in refusing to give the following instruction to the jury requested by the defendants:

"No acts of omission or commission, however criminal they may be in their nature, can constitute an offense against the United States unless declared by the laws of the United States to be such."

XII.

The court erred in giving that part of instruction number 4 which reads as follows:

"Another request which I refer to here of the defendants (No. 31) is as to crimes against the State of Idaho which are not to be considered in this trial. That is true. The testimony has shown, perhaps, that offenses have been committed, lives have been lost,
112 which might be construed as a murder; property has been destroyed for which somebody might be held under the laws

of the State for punishment. We have nothing to do with these offenses. You are not to hold these defendants for any offense of that kind."

XIII.

The court erred in giving that part of instruction number 10 which reads as follows:

"If, therefore, you find that any of these defendants or any persons with whom you may find they were associated as such conspiracy did, by the use of threats and intimidation or force against either the employees or officers or agents of said Bunker Hill and Sullivan Mining Company, cause such employees to cease work and quit the employment of said company, then such acts constituted and were in violation of the order of the court and come within the provisions of the statute."

XIV.

The court erred in giving that part of instruction No. 11 which reads as follows:

"While it is charged that the unlawful object of the alleged conspiracy was to prevent by force and threats the laborers of the Bunker Hill and Sullivan Mining Company from working for said company, proof of the conspiracy for such purpose may extend back beyond the time when the alleged unlawful purpose was consummated, but to make testimony of such prior conspiracy available or competent it must appear that the conspiracy was not abandoned, but that its objects were held and continued in contemplation until such time as they could be accomplished; and the same instruction I give you concerning the testimony introduced as to the objects entertained by the Miners' Union prior to the issuance of the order on the 28th day of May last."

XIV.

113 The court erred in giving that part of instruction No. 14 which reads as follows:

"I will say to you in this case, if they did do it, they had no right to drive out by force, threats, and intimidations the employees of the Bunker Hill and Sullivan Company. If they did do that, even though they did not know of this order which has been referred to, still they violated the order, because they violated it while engaged in the unlawful acts. That is the law, well established, and hence it makes no difference whether they knew of the order or not, whether it has been served upon them or not."

XV.

The court erred in denying defendants' motion in arrest of judgment upon the grounds stated in said motion, namely:

1. That the grand jury by which the indictment was found had no legal authority to inquire into the offense charged.

2. That this court had no jurisdiction over the offense charged in said indictment.

3. That the facts stated in said indictment do not constitute a public offense against the United States or an offense under the laws of the United States.

XVI.

The court erred in refusing to grant the defendants a new trial.

In order that the foregoing assignment of errors may be and appear of record, the defendants present the same to the court and pray that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

P. REDDY AND HAWLEY & REEVES,
Attorneys and Solictors for Def'ts.

114 (Endorsed:) (Original.) No. 1. United States district court in and for the district of Idaho. United States, plaintiff, *vs.* Peter Breen *et al.*, defendant-. Assignments of errors. Due service of within assignments of errors by copy admitted this 14th day of Nov., 1892. Fremont Wood, U. S. att'y, attorney for def't in error. Filed Nov. 12th, 1892. A. L. Richardson, clerk. Reddy, Campbell & Metson, attorneys for defendants.

115 *Petition for Writ.*

In the United States District Court of the Ninth Judcial District in and for the State of Idaho.

THE UNITED STATES
vs.
PETER BREEN, GEORGE A. PETTIBONE, JOHN MURPHY, MICHAEL L. DEVINE, and C. SINCLAIR, Defendants.

The defendants George A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair feeling themselves aggrieved by the judgment of conviction made and entered by said court on the 28th day of September, 1892, whereby it was adjudged that the defendant George A. Pettibone should be confined in the house of correction at Detroit for the term of two years, and the said Michael L. Devine should be confined in the house of correction at Detroit for the term of eighteen months, and the said John Murphy should be confined in said prison for the term of fifteen months, and the said C. Sinclair should be confined in said prison for the term of eighteen months, now come the said defendants above named, by P. Reddy and Hawley & Reeves, their attorneys, counsellors, and solicitors, and petition said court for an order allowing these defendants a writ of error from the judgment of conviction herein to the honorable United States Supreme Court, sitting at Washington, D. C., and according to the laws of the United States in that behalf made and

provided, and also that an order be made fixing the security which defendants shall give and furnish upon such writ of error, and that upon giving such security all proceedings be stayed in this court until said writ of error shall be heard.

And your petitioners will ever pray.

P. REDDY AND HAWLEY & REEVES,
Attorneys and Solicitors for Defendants.

116 (Endorsed:) No. 1. United States district court in and for the district of Idaho. United States, plaintiff, *vs.* Peter Breen *et al.*, defendant-. Petition for order for writ. Due service of the within petition by copy admitted this 14th day of Nov., 1892. Fremont Wood, U. S. att'y, attorney for def't in error. Filed Nov. 12th, 1892. A. L. Richardson, clerk. Reddy, Campbell & Metson, attorneys for defendants.

117 In the District Court of the United States for the District of Idaho, Northern Division.

THE UNITED STATES
vs.
PETER BREEN, GEORGE A. PETTIBONE, JOHN MURPHY, MICHAEL L. DEVINE, and C. SINCLAIR, Defendants.

Order Granting Writ of Error.

On motion of Messrs. P. Reddy and Hawley & Reeves, counsel for defendants, it is ordered that a writ of error to the United States Supreme Court from the judgment of conviction hereinbefore filed and entered herein from the order overruling a motion for a new tral be, and the same is hereby, allowed, and that a certified transcript of the statement on motion for new trial as settled, exhibits, records, and all proceedings herein be forthwith transmitted to said United States Supreme Court, and upon a bond being given and approved by the undersigned judge or, in his absence, by the clerk of said court as follows, to wit, by defendant George A. Pettibone, in the sum of four thousand dollars, or in lieu of such bond a deposit with said clerk of the sum of three thousand dollars in lawful money of the United States, and by each of the other defendants, John Murphy, Michael L. Devine, and C. Sinclair, a separate bond for each for the sum of three thousand dollars, or in lieu of such bond a deposit with said clerk of the sum of two thousand dollars, lawful money of the United States, for each of said last three named defendants so giving such bond or making such deposits, shall be released and execution of judgment suspended until the further order of the court or judge thereof, such bonds, if given, to be executed by good and sufficient sureties.

JAS. H. BEATTY, *Judge.*

Dated Boisé City, Idaho, November 11th, 1892.

118 (Endorsed:) No. 1. United States district court in and for the district of Idaho. United States, plaintiff, *vs.* Peter Breen *et al.*, defendant-. Order granting writ of error. Due service of within order by copy admitted this 14th day of Nov., 1892. Fremont Wood, U. S. att'y, attorney for def't in error. Filed Nov. 12th, 1892. A. L. Richardson, clerk. Reddy, Campbell & Metson, attorneys for defendants.

119 *Citation.*

UNITED STATES OF AMERICA, } *ss:*
District of Idaho, }

To Fremont Wood, Esq., attorney for the United States and United States district attorney for the district of Idaho, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and ninety-three, pursuant to an order allowing a writ of error entered in the clerk's office of the district court of the United States for the district of Idaho from a judgment of conviction entered on the 28th day of September, 1892, in that certain action wherein The United States was plaintiff and Peter Breen, George A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, *et al.* were defendants, and show cause, if any there be, why the judgment of conviction rendered against defendants G. A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, as in said order allowing writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Beatty, United States district judge for the ninth judicial district of the State of Idaho.

Dated Boisé City, Idaho, November 11th, 1892.

JAS. H. BEATTY, *Judge.*

(Endorsed:) No. 1. United States district court in and for the district of Idaho. United States, plaintiff, *vs.* Peter Breen *et al.*, defendant-. Citation. Due service of within citation by copy admitted this 14th day of Nov., 1892. Fremont Wood, U. S. att'y, attorney for def't in error. Filed Nov. 14th, 1892. A. L. Richardson, clerk. Reddy, Campbell & Metson, attorneys for defendants.

120 In the District Court of the United States in and for the District of Idaho.

THE UNITED STATES }
vs.
PETER BREEN *et al.* }

I, A. L. Richardson, clerk of the district court of the United States for the district of Idaho, do hereby certify the foregoing transcript of pages numbered from 1 to 120, inclusive, to be a full, true, and

correct copy of the pleadings and proceedings in the above-entitled cause now remaining of record and on file in my office.

Seal United States District Court, Idaho, 1890.

Witness my hand and the seal of said district court, affixed at Boisé City, Idaho, this 15th day of November, A. D. 1892.

A. L. RICHARDSON, *Clerk.*

Endorsed on cover: Case No. 15,211. Idaho D. C. U. S. Term No., 1241. George A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, plaintiffs in error, *vs.* The United States. Filed November 23, 1892.

FILED.
JAN 30 1893
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1892.

GEORGE A. PETTIBONE ET. AL.

v.

THE UNITED STATES.

No. 1241.

In Error to the District Court of the United States for the District of Idaho.

Brief for Plaintiffs in Error.

WALTER H. SMITH,
P. REDDY,
Attorneys for Plaintiffs in Error.

WASHINGTON:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1893.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

GEORGE A. PETTIBONE ET AL.

v.

THE UNITED STATES.

No. 1241.

In Error to the District Court of the United States for the District of Idaho.

Brief for Plaintiffs in Error.

STATEMENT.

These plaintiffs in error, George A. Pettibone, John Murphy, Michael L. Devine, and C. Sinclair, were convicted, September 28, 1892, of the crime of conspiracy. They were indicted with nearly one hundred other defendants, ten of whom were tried with plaintiffs in error and were acquitted.

As to all the other defendants the case was continued.

There is another indictment now pending against

nearly one hundred persons precisely like the indictment in this case except the names of the defendants.

Plaintiffs in error are now imprisoned in the House of Correction of Detroit.

This case is a test case, and it is desired by all parties that it may be disposed of before the others are tried.

Plaintiffs were indicted under sections 5399 and 5440 of the Revised Statutes of the United States. They are in these words. We give section 5440 first:

"SEC. 5440. If two or more persons conspire either "to commit any offence against the United States, or to "defraud the United States in any manner, or for any "purpose, and one or more of such parties do any act to "effect the object of the conspiracy, all the parties to "such conspiracy shall be liable to a penalty of not less "than one thousand dollars, and not more than ten "thousand dallars, and to imprisonment not more than "two years.

"SEC. 5399. Every person who corruptly, or by "threats or force, endeavors to influence, intimidate, or "impede any witness, or officer, in any court of the "United States in the discharge of his duty, or corruptly "or by threats or force, obstructs or impedes, or en- "deavors to obstruct or impede, the due administration "of justice therein, shall be punished by a fine of not "more than five hundred dollars, or by imprisonment not "more than three months, or both."

The indictment alleged that on the 28th of May, 1892, suit was commenced in the United States circuit court for the district of Idaho, wherein the Bunker Hill and Sullivan Mining and Concentrating Company, a corporation, was complainant, and the Miners' Union of Wardner and others were defendants, and that on said day a writ of injunction was duly and regularly issued by the court in that cause, directed to said defendants, whereby the said

defendants and each of them, their aiders, abettors, attorneys, officers, agents, servants, members, and associates, were restrained from committing or performing any of the acts mentioned and enumerated in said writ of injunction.

The writ is in these words:

"IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NINTH JUDICIAL CIRCUIT IN AND FOR THE DISTRICT OF IDAHO.

THE BUNKER HILL AND SULLIVAN MINING AND CONCENTRATING COMPANY, a Corporation, Complainant,

versus

THE MINER'S UNION OF WARDNER, IDAHO; THE MINERS' UNION OF GEM, IDAHO [and others, giving their names, and numerous others whose names and residences are unknown,] Defendants.

Upon reading and filing the bill in the above-entitled cause, and the affidavits of T. H. Simmons, Annie E. Simmons, and hearing Messrs. Heyburn and Hogan, solicitors for and of counsel for the complainant, it is ordered that the above-named defendants do appear before this court, at the United States court-room, in Boise City, in said district, on the 30th day of June, 1892, at 10 o'clock a. m., of said day, if it be a court day, or else on the court day next following, at 10 o'clock a. m. of said day, then and there to show cause, if any, why a provisional injunction should not issue herein according to the prayer of the bill in that behalf.

And it is further ordered that upon the complainant giving or cause to be given to the defendants a bond, with sureties, in the sum of two thousand dollars, to be approved by the clerk of this court, conditioned to pay the said defendants whatsoever damages and losses, not

exceeding the sum of two thousand dollars, that they may sustain by reason of this order, if the same be wrongful or without sufficient cause.

In the meantime and until the further order of this court herein, the said defendants and each of them, their aiders, attorneys, officers, agents, servants, and employees, be, and they are hereby, severally restrained and enjoined from in any manner interfering with the complainant herein in any of its work, in and upon or about its said mining claims, to wit, the Bunker Hill, the Sullivan, and the Small Hopes Lode mining claims mentioned in the complaint herein, or in any part thereof, and from in any manner by force or threats or otherwise making any attempts to intimidate any employee of the complainant herein, or from attempting to prevent by any force or intimidation any employee of the said complainant from proceeding to work for the said complainant in a peaceful, quiet, and lawful manner in and upon any part of the aforesaid mines or mining claims, or in or upon any works of the said complainant therein or thereabouts or at all, and that they, the said parties aforesaid, be, and they are hereby, further enjoined from intimidating or threatening, or by any force, threats, or any intimidation trying to prevent any employee of the complainant herein from working in or upon the aforesaid mines mentioned in the complaint herein, or at the mills of complainant, or in or upon any mining or other property of complainant, or from preventing any one from entering the service of the complainant herein, or in any unlawful manner interfering with the business of said complainant in employing persons to work upon its said property, or from going upon any part of the said complainant's property without permission from the complainant or its agents or employees so to do, or in any manner entering upon the works of the complainant, or within the buildings of the complainant, without its consent, or the consent of its managers, agents, or employees, and reference is hereby had to the bill of complaint herein, to which your attention is hereby directed, until the further order of this court or the judge thereof, and the foregoing restraining order is also directed against the agents, servants, aiders, abettors,

members, and associates of the defendants or either of them.

JAS H. BEATTY,
Judge of said Court.

Attest: A. L. RICHARDSON,
Clerk of said Court, with the Seal Thereof."

The indictment further alleged that the defendants, on the 11th of July, 1892, and while said writ of injunction was in full force and effect, did unlawfully, corruptly, fraudulently, and feloniously conspire, combine, confederate, and agree together to commit an offence against the United States, to wit, to intimidate, by force and threats of violence, the employés of the said Bunker Hill and Sullivan Company then working on its premises described in the writ of injunction, with intent to compel the said employés to abandon their work on the mines, mill, and other buildings of said company, and to intimidate, by force and threats of violence, the officers and agents of said Bunker Hill and Sullivan Company, with intent to compel said officers and agents to discharge and dismiss all employés who were not members of the Miners' Union, who were working for complainant on the property described in the writ of injunction.

It further alleged that the defendants, on the 12th of July, 1892, in aid of and in furtherance of said unlawful combination, did while said writ of injunction was in full force and effect, and while said suit was still pending, unlawfully, fraudulently, corruptly, wilfully, and feloniously, by force and violence and threats of violence, intimidate and compel the employés of the said Bunker Hill and Sullivan Company then working for said company, in and about the mills and other property of said company, to cease and abandon work in and upon said mills and other property, being the same described in said writ of injunc-

tion; and did, by violence and threats of violence, intimidate and compel the officers and agents of said Bunker Hill and Sullivan Company, against their will and consent, to discharge and dismiss from said company all the employés thereof who were not members of said Miners' Union, and who were working in and upon the property of said company.

The indictment further alleged that the grand jurors upon their oaths do charge and say that the said defendants did, on the 11th day of July, 1892, unlawfully, wilfully, fraudulently, and feloniously conspire, combine, confederate, and agree together to commit an offence against the United States, to wit, to corruptly and by force and threats obstruct and impede the due administration of justice in the aforesaid United States circuit court for the ninth judicial circuit district of Idaho, and did thereafter, on the 12th day of July, 1892, in pursuance of said agreement, unlawfully, etc., obstruct and impede the due administration of justice in the said circuit court.

Plaintiffs in error were convicted and sentenced to imprisonment as follows: George A. Pettibone, two years; John Murphy, fifteen months, and M. L. Devine and C. Sinclair, each eighteen months.

Assignment of Errors.

1. The court erred in overruling the motions to quash the indictment.

2. The court erred in overruling the demurrers to the indictment.

3. The court erred in holding that the defendants were not entitled to separate trials.

4. The court erred in holding that the defendants were entitled to only three peremptory challenges to jurors.

5. The court erred in holding that J. W. Berryman was a competent juror.

6. The court erred in refusing the following request of defendants: "It is only upon proof beyond reasonable "doubt that the suit mentioned in the indictment was "commenced, and that the defendants had notice or "knowledge thereof, and that the injunction set forth in "the indictment was issued and served upon the defend- "ants, or that the defendants had notice or knowledge of "the issuance and commands of said injunction and the "agreement between the defendants to disobey the said "injunction and to do the acts thereby prohibited; that "said acts become or constitute an offence against the "United States."

7. The court erred in refusing to give the following instruction to the jury requested by the defendants: "If you find from the evidence that the defendants did "conspire to intimidate by force and threats of violence "the employés of the Bunker Hill and Sullivan Mining "and Concentrating Company working in and upon the "mines of the said company, with intent then and there "and thereby to compel the employés of the said Bunker "Hill and Sullivan Mining and Concentrating Company "to abandon their work in and upon the mines, mill, and "other buildings of said mining company last men- "tioned, and to intimidate by force and threats of "violence the officers and agents of the said Bunker Hill "and Sullivan Mining and Concentrating Company, with "the intent then and there and thereby, by means of "said force and threats of violence, to compel the officers "and agents of said mining companies to discharge and "dismiss from the employ of the said mining companies "all employés other than such as were members of what "is called the Miners' Union who were working either

" upon or within the mines of the said company, or in " said company's mills and other buildings, and did, in " pursuance of said conspiracy, commit the acts alleged, " but that the evidence does not prove to your satisfac- " tion and beyond a reasonable doubt that the said " defendants had at the time of conspiring or agreeing " to do the acts, or at the time of doing the said acts, " notice or knowledge that the said injunction had been " issued or would be issued, you should acquit the " defendants."

8. The court erred in refusing to give the following instruction to the jury requested by the defendants: " If you find from the evidence that the defendants " conspired to do the acts recited in the last instruction, " and that in pursuance of said conspiracy they com- " mitted the acts specified in said instruction, but at the " time of entering into said conspiracy, or doing said acts, " they had no notice or knowledge of the issuance of the " said injunction or the commands therein contained, or " that such an injunction would be issued, such con- " spiracy and such acts would not constitute the offence " charged in the indictment or an offence against the " United States, and you should acquit the defendants."

9. The court erred in refusing to give the following instruction to the jury as requested by the defendants: " Disobedience to an injunction order, or a command " therein, implies a knowledge of the issuance and re- " quirements of such order, and unless the prosecution " have proved in this case to your satisfaction and beyond " a reasonable doubt that the defendants had notice or " knowledge of the issuance of the restraining order set " forth in the indictment, or had notice or knowledge that " it was about to be issued, or would be issued, they can- " not be guilty of disobeying said order of injunction."

10. The court erred in refusing to give the following instruction to the jury as requested by the defendants: "From the fact that a certain act or acts may constitute "a crime against the State of Idaho or is in itself or are "in themselves criminal or unlawful, it does not follow "that it is a crime against the United States."

11. The court erred in refusing to give the jury the following instruction as requested by the defendants: "No "acts of omission or commission, however criminal they "may be in their nature, can constitute an offence against "the United States, unless declared by the laws of the "United States to be such."

The court erred in giving that part of instruction number 4 which reads as follows: "Another request which "I refer to here of the defendants (No. 31) is as to crimes "against the State of Idaho, which are not to be con-"sidered in this trial. That is true. The testimony has "shown, perhaps, that offences have been committed, "lives have been lost, which might be construed as a "murder; property has been destroyed for which some-"body might be held under the laws of the State for "punishment. We have nothing to do with these offences. "You are not to hold these defendants for any offence of "that kind."

13. The court erred in giving that part of instruction number 10 which reads as follows: "If, therefore, you "find that any of these defendants or any persons with "whom you may find they were associated, as such con-"spiracy did, by the use of threats and intimidation or "force against either the employés or officers or agents "of said Bunker Hill and Sullivan Mining Company, "cause such employés to cease work and quit the em-"ployment of said company, then such acts constituted "and were in violation of the order of the court and "come within the provisions of the statute."

14. The court erred in giving that part of instruction No. 11 which reads as follows: "While it is charged "that the unlawful object of the alleged conspiracy was "to prevent by force and threats the laborers of the "Bunker Hill and Sullivan Mining Company from work- "ing for said company, proof of the conspiracy for such "purpose may extend back beyond the time when the "alleged unlawful purpose was consummated, but to make "testimony of such prior conspiracy available or compe- "tent it must appear that the conspiracy was not aban- "doned, but that its objects were held and continued in "contemplation until such time as they could be accom- "plished; and the same instruction I give you concerning "the testimony introduced as to the objects entertained "by the Miners' Union prior to the issuance of the order "on the 28th day of May last."

15. The court erred in giving that part of instruction No. 14 which reads as follows: "I will say to you in this "case, if they did do it, they had no right to drive out by "force, threats, and intimidations the employés of the "Bunker Hill and Sullivan Company. If they did do that, "even though they did not know of this order which has "been referred to, still they violated the order, because "they violated it while engaged in the unlawful acts. "That is the law, well established, and hence it makes no "difference whether they knew of the order or not, "whether it has been served upon them or not."

15. The court erred in denying defendants' motion in arrest of judgment upon the grounds stated in said motion, namely:

1. That the grand jury by which the indictment was found had no legal authority to inquire into the offence charged.

2. That this court had no jurisdiction over the offence charged in said indictment.

3. That the facts stated in said indictment do not constitute a public offence against the United States, or an offence under the laws of the United States.

16. The court erred in refusing to give the defendants a new trial.

ARGUMENT.

We shall first consider the questions made as to the sufficiency of the indictment. All the methods known to the law were resorted to for the purpose of raising the question of sufficiency. There was a motion to quash, a demurrer and a motion in arrest of judgment.

We claim that the indictment was fatally defective, and that the separate demurrers of each defendant thereto should have been sustained and the case ended.

The indictment was bad for several reasons :

First, it did not set out the names of any of the employés, or officers or agents of the mining company who were alleged to have been intimidated.

The defendants had a right to know just what they were charged with having done, and they had a right to know upon whom they had used threats or intimidation, so that they could prepare their defence.

The object of an indictment is to inform the defendant of the crime which it charges with such particularity as will advise him of all the essentials of the charge, and enable him, in case of an acquittal, to plead it in bar of another prosecution for the same offence.

The names of the persons who have been injured by the defendants are supposed to be known to the prosecution. If they are not, the indictment must allege that their names are to the grand jurors unknown. When that is done, everything that could be done to give the defendants knowledge of the particulars of their offence has been done. It was

not done in the present case. (*United States* v. *Simmons*, 96 U. S. 362.)

Second. The indictment was bad because it did not allege that the circuit court had jurisdiction of the parties in the civil suit, or any facts showing that it had jurisdiction of parties or subject-matter.

It has been so often held by this Court that even in civil suits the jurisdiction of the United States circuit courts must appear upon the face of the record, and that, too, *affirmatively*, and not by inference or argument, that we feel like apologizing for citing the cases on the subject.

In *Continental Ins. Company* v. *Rhoades* (119 U. S. 239), Mr. Chief Justice Waite said:

"It was settled at a very early day that the facts on "which the jurisdiction of the circuit courts rest must, in "some form, appear on the face of the record of all suits "prosecuted before them. (*Turner* v. *Bank of North* "*America*, 4 Dall. 8; *Bushnell* v. *Kennedy*, 9 Wall. 387; "*Hornthal* v. *Collector*, 9 Wall. 560; *Ex parte Smith*, 94 "U. S. 455; *Robertson* v. *Cease*, 97 U. S. 646; *Grace* v. "*American Central Ins. Co.*, 109 U. S. 278–283; *Boss* v. "*Preston*, 111 U. S. 252; *Mansfield, Cold Water & Lake* "*Michigan Railway* v. *Swan*, 111 U. S. 379, 382; *Han-* "*cock* v. *Holbrook*, 112 U. S. 229.) And it is error for the "court to proceed without its jurisdiction is shown. "(*Grace* v. *American Central Ins. Co.*, *supra*; *Thayer* v. "*Life Association*, 112 U. S. 717; *Mansfield, &c., Rail-* "*way* v. *Swan*, *supra*.)" * * * "And, besides, the ju- "risdiction must appear positively. It is not enough that "it may be inferred argumentatively."

In *Anderson* v. *Watt* (138 U. S. 702), Chief-Justice Fuller, in delivering the opinion of the Court, said: "As "the jurisdiction of the circuit court is limited in the "sense that it has none except that conferred by the Con- "stitution and laws of the United States, and *the pre-*

" *sumption is that a cause is without its jurisdiction unless* " *the contrary affirmatively appears*, it is essential that in " cases where jurisdiction depends upon the citizenship of " the parties such citizenship, or the facts which in legal " intendment constitute it, should be distinctively and " positively averred in the pleadings, or should appear " affirmatively with equal distinctness in other parts of " the record. It is not sufficient that jurisdiction may be " inferred argumentatively from the averments."

Now, if this is the rule in civil cases, *a fortiori*, in criminal cases, where the jurisdiction of a circuit court is a material fact, it must be affirmatively alleged.

It cannot be inferred by argument from allegations that are made.

There is no allegation of jurisdiction or of any facts from which it may be even inferred in this indictment.

If the court had no jurisdiction of the parties or subject-matter all the orders are void and must be treated everywhere as nullities. These plaintiffs in error violated no law if they disregarded the injunction.

In *Ex parte Rowland* (104 U. S. 612) Mr. Justice Waite, in delivering the opinion of the Court, said: " But if the " command was in whole or in part beyond the power of " the court, the writ or so much as in excess of jurisdic- " tion, *was void*, and the court had no right in law to " punish for any contempt of its unauthorized require- " ments. Such is the settled rule of decision in this " Court. (*Ex parte Lang*, 18 Wall. 163; *Ex parte Parks*, " 93 U. S. 18; *Ex parte Liebold*, 100 *id.* 371; *Ex parte* " *Virginia*, 339.)"

In re Ayres (123 U. S. 483) Mr. Justice Matthews, in delivering the opinion of the Court, said: " When a court of " the United States undertakes by its process of contempt " to punish a man for refusing to comply with an order

" which that court had no authority to make, the order " itself, being without jurisdiction, is void, and the order " punishing for the contempt is equally void; and that " when the proceeding for contempt in such a case results " in imprisonment, this Court will, by its writ of habeas " corpus, discharge the prisoner. (*Ex parte Fiske*, 113 " U. S. 713, 718.)" (See 2 High on Injunction, 3d ed., § 1425.) When an order is *void* it imposes no obligation; it justifies no action; it is no defence; it is absolutely as though it were not. As applied to this case, if the circuit court had no jurisdiction of the parties or the subject in the civil suit, it could make no order of injunction; and if it did make one, that order was void. It bound nobody. It might be disregarded or even trampled upon with impunity.

Third. The indictment was bad because it did not charge that any of the defendants in the civil suit were ever served with process or otherwise brought into court, or that any of the persons named in the writ of injunction were ever, in any manner, notified of the issuance of the same.

The pleader who drew this indictment no doubt intended to charge (whether he did or not will be considered hereafter) a conspiracy to obstruct and impede the due administration of justice by violating the commands of the writ of injunction.

That is the charge. Now, how could a defendant be guilty of disregarding and violating the commands of a writ of injunction unless he knew there was an injunction? Guilt consists in the intent. How can there be an intent to violate the writ when the person does not know that there is any such writ? The thing is impossible. This indictment does not aver any such knowledge. It was vital that it should do it, in order to make out the offence. This seems so plain that its mere

statement is its argument. In *United States* v. *Hess* (124 U. S. 486), Mr. Justice Field said: "The statute upon "which the indictment is founded only describes the gen- "eral nature of the offence prohibited; and the indict- "ment, in repeating its language without averments dis- "closing the particulars of the alleged offence, states no "matters upon which issue could be formed on submis- "sion to a jury. The general and with few exceptions, "of which the present is not one, the universal rule on "the subject is that all the material facts and circum- "stances embraced in the definition of the offence must "be stated, or the indictment will be defective. *No* "*essential element of the crime can be omitted* without de- "stroying the whole pleading. The omission cannot be "supplied by intendment or implication, and the charge "must be made *directly* and *not inferentially or by way of* "*recital.*"

The authorities upon this subject of knowledge are as we claim the law to be. It has been repeatedly held that there was no liability on the part of a defendant for a breach of such an order unless it was shown that he had been informed of the existence of the order at the time of committing the acts constituting the alleged violation.

2d High on Injunction (3d ed.), § 1452:

"But it is usually requisite that service of the writ of "injunction should be shown, since without such service "or notice of the injunction there can be no violation."

2d High on Injunction (3d ed.), § 1421:

"The mandate of the court being effectual upon all "parties *having notice thereof* from the time it is given, "to fix defendant's liability for a violation it is only neces- "sary to show that he was actually apprised of the exist- "ence of the order at the time of committing the acts "constituting the violation."

2d Daniel, Ch. Pl. Pr., star page 1684 :

"Before the court will punish for the breach of an "injunction or restraining order, it must be clear that the "party knew that the injunction had been issued, or that "the order had been made. Strictly speaking, he ought "to be served with the writ or order itself in the manner "already pointed out, but circumstances may justify a "committal without the actual service of the writ or "order. * * * And service of a copy of the minutes "of the order, or of a notice of its having been made, will "be sufficient."

State v. *Carpenter* (54 Vt. 551), judgment was arrested because the indictment did not allege that the defendant knew the person he was charged with hindering was an officer, and this after plea of guilty.

Rapalge on Contempts, sec. 46–47, 86–87.
Sickles v. *Burton*, 4 Blatch. 14.
Whipple v. *Hutchinson*, 4 Blatch. 190.
United States v. *Beatty*, 1 Hemp. 496.

This defect of want of knowledge by defendants in the statement of the offence is not helped out by any averments in the indictment. The allegation that the defendants did intimidate the employés of the mining company by threats and violence and compel them to abandon the service of the company is not sufficient. The court below held that this fact was a violation of the injunction, because the defendants had no right to thus intimidate, and in doing so were engaged in an unlawful act, and while thus engaged in an unlawful act did, *in fact*, violate the injunction, although they were ignorant that an injunction had been allowed.

It helped out the insufficient statement of the conspiracy by the averments of what was done in furtherance

of the object of the conspiracy. This cannot be done, and it has been so adjudged by this Court. The question was made in *Britton* v. *United States* (108 U. S. 199). The syllabus is as follows: "In an indictment for a conspiracy under § 5440 Rev. Stat., the conspiracy must be sufficiently charged; it cannot be aided by averments of acts done by one or more of the conspirators in futherance of the object of the conspiracy."

We rely upon this case as settling the question as we claim the law to be and as establishing the insufficiency of this indictment.

Again, the indictment was bad because it did not allege that the purpose of the conspiracy was to violate the injunction or to impede or obstruct the due administration of justice in the circuit court of the United States.

It is necessary in an indictment to state the purpose of the conspiracy. It must charge that the conspiracy was to do some act made criminal by the laws of the United States, and it must state with such reasonable certainty the acts intended to be effected or carried out by the agreement of the parties so that it can be seen that the object of the conspiracy was a crime against the United States.

In re Wolf, 27 Fed. Rep. 611.
State v. *Parker*, 43 N. H. 83, 84.
U. S. v. *DeGrief*, 16 Blatchford, 25.

The purpose of this conspiracy, as specifically alleged in the indictment, is not an offence against the United States.

It is not alleged that it was the purpose of the conspiracy to violate the injunction referred to in the indictment. That may have been the intention of the pleader; but he failed to express it clearly.

If this Court shall agree with these views or any of them, this case is ended, and the judgment must be reversed or arrested and the plaintiffs in error discharged.

We next call the attention of the Court to assignments of error numbered 6, 7, 8 and 9. Each of these embodies requests to charge which were refused by the court. They all relate to notice or knowledge by the defendants of the writ of injunction, and in substance requested the court to charge that knowledge on the part of defendants should be proved by the prosecution, otherwise their verdict should be for the defendants. The bill of exceptions expressly states that no such proof was given. It says:

"There was no evidence given on the trial showing or "tending to show that the writ of injunction mentioned "and set forth in the indictment was served upon the "defendants, or either of them, or that the defendants, or "either of them, had any notice or knowledge of the "issuance of said writ." (Record, p. 44.)

Each of these requests was refused by the court, and each excepted to, and it charged that neither notice nor knowledge was necessary. It said:

"I will say to you in this case, if they did do it, they had no right to drive out by force, threats, and intimidation the employés of the Bunker Hill and Sullivan Com- "pany. If they did do that, even though they didn't "know of this order which has been referred to, still "they violated the order, because they violated it while "engaged in an unlawful act. That is the law, well estab- "lished, and hence it makes no difference whether they "knew of the order or not, whether it had been served "upon them or not." (Record, p. 57.)

Upon this question of knowledge we refer to what we have already said on that subject when considering the

sufficiency of the indictment. It seems to us very strange that a man can be convicted of obstructing or impeding the due administration of justice in a case in court, and be sent to the penitentiary for doing it, when he did not know that there was such a case in court. If that is the law, it is an outrageous law, and it is time that it was changed, and no better tribunal can be found for that purpose than this Court.

The 10th and 11th assignments of error relate to the refusal of the court to charge as follows: "From the "fact that a certain act or acts may constitute a crime "against the State of Idaho, or is in itself, or are in "themselves, criminal or unlawful, it does not follow that "it is a crime against the United States." "No acts of "omission or commission, however criminal they may be "in their nature, can constitute an offence against the "United States unless declared by the laws of the United "States to be such."

This is certainly erroneous. Nothing is a crime against the United States unless it is made such by statute.

This Court, in *Britton* v. *United States* (108 U. S. 206), *supra*, said:

"There are no common law offences against the United "States (*United States* v. *Hudson*, 7 Cranch, 32; *United* "*States* v. *Coolidge*, 1 Wheat. 415), and section 5204 does "not of itself create an offence against the United "States."

It must therefore be admitted that the refusal to charge was erroneous, and the only possible manner of avoiding its effect is to say that it did the defendants no harm. But is that so? This was a complicated case, lasting 21 days, and in which 97 witnesses were examined, and involved a consideration of what was criminal and what

was unlawful, and the jury might well have confounded acts that were unlawful under the State laws with those under the United States laws, and believed that a state of fact which was unlawful in the State was equally so under the laws of the United States.

No. 13. The court charged that if the defendants or any persons with whom you may find they were associated as such conspiracy did, by use of threats and intimidations or force, against either the employés or officers or agents of said Bunker Hill and Sullivan Mining Company, cause such employés to cease work and quit the employment of said company, then such acts constituted and were in violation of the order of the court and come within the provisions of the statute.

This would have been correct if the court had qualified it with the statement that the defendants had knowledge of the order of the court.

No. 14. This assignment has been considered under the 6th, 7th, 8th, and 9th assignments of error.

No. 15. The court erred in overruling the motion in arrest of judgment for the reason that the indictment was fatally defective, as we have already shown.

No. 16. The court erred in not granting the defendants a new trial.

We think we have shown such errors as required that a new trial should have been granted.

We desire to call the especial attention of the Court to the fact that neither Michael L. Devine nor C. Sinclair are named in the writ of injunction. The name of "Mike" Devine is there, but we have no right to assume that "Mike" and Michael L. Devine are one and the same person. As was said in *United States* v. *Hess, supra*, "omission cannot be supplied by intendment or implica-"tion, and the charge must be made directly and not "inferentially or by way of recital."

But C. Sinclair is wholly omitted from the writ. Can it be that a man who is not even named in a writ of injunction can be tried, convicted, and sent to the penitentiary for disobeying a writ that he was not a party to and never heard of? It seems to have been done in Idaho, but it is a new departure, and one that does not highly commend itself to an intelligent lawyer or judge.

We think this case is *sui generis;* that unmistakable errors were committed by the court below, and that the judgment ought to be and will be reversed.

Respectfully submitted.

WALTER H. SMITH,
P. REDDY,
Atty's for Plaintiffs in Error.

JANUARY 30, 1893.

Office Supreme Court U. S.
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In the Supreme Court of the United States.

OCTOBER TERM, 1892.

GEORGE A. PETTIBONE ET AL.
vs.
THE UNITED STATES. } No. 1241.

BRIEF FOR DEFENDANT IN ERROR.

W. H. H. MILLER,
Attorney-General.
CHARLES W. RUSSELL,
Assistant Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

GEORGE A. PETTIBONE ET AL.
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THE UNITED STATES. } No. 1241.

BRIEF FOR DEFENDANT IN ERROR.

I.

The plaintiffs were allowed but three peremptory challenges, instead of the number allowed in capital crimes and "other felonies" (R. Stat., 819), the present offense not being regarded as a felony within the meaning of the statutes.

It is not a common-law offense, being different from the common-law conspiracy (3 Woods, *United States* vs. *Dennell*, p. 50; 11 Blatch., 170; 5 Dillon, 58). It is not one of those offenses, therefore, called by a common-law name and left to be defined and classified by the common law.

When created it was expressly called a misdemeanor. (14 Stats. L., 484.) The law was part of one wholly de-

voted to the revenue, and the revisers of the statutes in condensing it have omitted the phrase describing it as a misdemeanor, and also some other words, but without changing its meaning. Unless this revision was intended to, or did in consequence of some other law, change its class, we have here the manifest intent of Congress to have it a misdemeanor.

But the work of the revisers indicates no such purpose. They omitted the phrase in pursuance of a system which cut out in many cases the phrase "shall be deemed a misdemeanor," and in many cases the phrase "shall be deemed a felony;" so that, in the sections of the Revised Statutes especially relating to crimes, there remain but one such phrase as to felony and but one as to misdemeanor. (See 1 Stat., 113, 114, 115, 250, 382, 383, 574; 2 Stat., 404, 405; 4 Stat., 118, 119; 9 Stat., 120; and R. S., §§ 5414, 5457, 5464.) It can not have been the purpose to change the class of all these misdemeanors and also of all these felonies; and as the omissions were systematically and indiscriminately made, it can not have been the purpose to change the class of *any* of the offenses; and, therefore, it could not have been intended to change this misdemeanor into anything else. The same purpose must run throughout. Condensation being a main object of revisers, and these phrases demonstrably both useless and mischievous, a sufficient reason existed in the desire for brevity, and we can think of no other. The phrases were useless, because no good purpose could be served by calling an offense by a name when its description was given and its punishment ascertained; and they were mischievous because so indiscriminately applied that they were confusing.

But if there was no intention to change the class of this misdemeanor or these felonies, was there any general rule of law or statute which came in and operated to reclassify them when no longer named as felonies or misdemeanors? No statute can be found, and no rule of law is known to us, unless it be the one which makes all described but unnamed offenses misdemeanors. (Russell on Crimes, 45, etc.) That, however, would leave our offense what it was before.

Of course, if there is a rule applicable to Federal offenses which rationally divides them, by their earmarks, into felonies and misdemeanors, that may have operated to newly separate them at the revision. Such a rule must be sought by an examination of the offenses not named by common law names and not classified by express terms prior to the revision. If these are felonies or misdemeanors because they have certain characteristics, it is important to ascertain the criterion for judging or classifying them. If no such rule or criterion can be discovered, then again our misdemeanor remains unchanged. Let us see how that is.

Nothing is better settled than that there is no common-law offense against the United States. The whole system is statutory, even when the common law is utilized for definition. Were it otherwise, it is not easy to see how a new statutory crime would rise to be a felony unless expressly made so or given the incidents characteristic of a common-law felony, and so made a felony by evident intent. But the common law can not operate here at all. The *resemblance* of a new Federal statutory crime to an old common-law felony can not make the former a felony.

If that resemblance can be used as evidence of the legislative intent (on the principle, if there is any such, that Congress intended all offenses resembling common-law felonies to be felonies), this rule would still leave our offense a misdemeanor. (Bishop, Crim. Prac., v. 2, 205; v. 1, 534; Russell, Crim. 45.)

If we turn from the common law to the language and history of Federal criminal legislation, in search of a criterion in the separation of Federal felonies from Federal misdemeanors, we find a curious state of affairs; and the decisions of the courts do not furnish much aid.

In the case of *Mackin* vs. *United States* (117 U. S., 348), this court has furnished a rule to determine what is an "infamous crime" within the meaning of the constitutional guarantee of an indictment by a grand jury. It is held that the word infamous refers to the punishment; that among infamous punishments imprisonment in the penitentiary has come to be regarded as one, and that where the punishment is or may be that one the accused is entitled to the indictment guaranteed. In the course of the opinion, the customary division of offenses by the States and the sending of felons to the State penitentiary are mentioned. This same criterion might seem to answer for the classification of Federal offenses into felonies and misdemeanors; but it will not fit the facts.

We do indeed find that, except upon accidental necessity, unless a man was sentenced to imprisonment at hard labor or for as long as a year, the Federal punishment was not imprisonment in a State jail or penitentiary. (4 Stat., 118; R. S., 5541, 5542.)

But not only are many felonies punished for shorter terms than misdemeanors, but we find both hard labor and imprisonment in the penitentiary to be the lot of those expressly declared guilty of misdemeanors. Turning over the pages of the Revised Statutes, we find on p. 1056 an offense declared a high misdemeanor, and punishable with hard labor and imprisonment for not more than two years.

A man convicted and sentenced for over a year would go to a penitentiary and there perform hard labor. In other parts of the Revision (not exclusively devoted to crimes and escaping the pruning of the revisers) we find on page 1024 another "high misdemeanor" which would place a man in the penitentiary. In sections 5282, 5283, 5284, 5285, and 5286, the same. On page 1031 we find a "misdemeanor" punished with imprisonment for not over three years and expressly "in the penitentiary." So on page 1032. On page 1007 we find a "misdemeanor" punished with imprisonment for *not less than* five nor more than ten years. On page 990 we find that a bankrupt who secretes any property belonging to his estate is given imprisonment, with or without hard labor, for not more than three years. On page 607 a "misdemeanor" is punished with a like imprisonment for three years and on the same page another "misdemeanor" is punished with imprisonment for *not less than* one year. On page 554 another, not more than two years.

Felonies are expressly mentioned and given similar punishments, including terms as short as six months, on pages 1056, 642, 646, 596, and elsewhere.

All these are "infamous crimes" under the ruling of the court; but obviously imprisonment in the penitentiary as a possible punishment is not the Congressional distinction between a felony and a misdemeanor.

We can not, therefore, apply such a test to the statutory offenses not expressly classified.

See also 2nd Sup. R. S., p. 152; ditto, 474, 475; ditto, 396; ditto, 46; ditto, 87. In 8th Blatch., p. 66, Judges Woodruff and Blatchford declared unlawful registration, under R. S. 5512, a misdemeanor, although the punishment was infamous; and Judges Brewer and Thayer have held the same as to sections 5511 and 5512. (32 Fed. Rep., 775.)

But it will be said Congress would hardly use these phrases without any reason or method. We do not think so either, and have sought for the reason. It has already been shown that in the titles devoted exclusively to crimes the revisers indiscriminately rejected the phrases. Let us see whether both they and those who put them in can not be justified.

The Constitution had hardly been adopted when laws concerning crimes were passed. They were filled with these phrases "shall be deemed a felony," etc. The reason of this lies in the novelty of the Government and the fact that its relations to the common law were defined only long afterwards. When an offense was declared a felony in England or wherever the common law operated, serious consequences followed, as in most of the States they do yet: forfeitures, disqualifications, and the like. Congressional statutes could impose, as they have professed to

remove, such consequences. And these were the first Congresses—ignorant of what might be done about this, what distinctions of punishment might be adopted, and what other use might be made of preserving the phrases they were accustomed to see in statutes about felonies and misdemeanors. This, we submit, is the reason the practice began, and, like all such practices, it was continued by imitation and force of habit, and because the word felon might have a deterrent effect, until, at the very time the revisers were rejecting it, Congress altered the law as to challenges by substituting the word felonies for cases in which the right of peremptory challenge now exists, thus giving rise to the question what Federal crimes are felonies and what are not.

Had this change been made in the early days, we think no one would have hesitated to understand the word felonies to be confined to common-law offenses named and offenses expressly declared to be felonies. That the word was supposed to refer to the common law and offenses to be "deemed" to be common-law felonies seems clear. Take the offense briefly described in Rev. Stat., p. 1038, as an assault with intent to commit any felony. If we go back to 4 Stat., p. 121, we see this same offense, but it is described as an assault with intent to kill, steal, rape, commit mayhem, or any other felony. While laws (apparently unnecessary) were passed to get rid of the old forfeitures, corruption of blood, etc., we do not think the conception arose in the early days of a new kind of statutory felony, neither one known to the common law, nor one arising from giving the incidents of forfeiture, etc., nor the imitation offense "deemed to be a felony."

When, in view of the great number of peremptory challenges allowed by the act of 1790, chapter 9, section 30, in which nothing was said about any but capital offenses, Congress legislated for other offenses as to which the right of peremptory challenge "now exists," it meant, as we conceive, to modify the well-known usage of the courts in following the State practice, so as to make the number of challenges uniform instead of variant in the different States. The kind of offense to which peremptory challenge could apply must have been ascertained by that usage, for there was no law except the State laws.

But this whole plan was changed by striking out the phrase about the right now existing and substituting cases of felony. This, after a long period of such legislation as we have described, forced the question: What is a felony in the meaning and intent of Federal criminal statutes? No definition had ever been given, and, however it may shock our sense of the fitness of things, we submit that there is no evidence of the Congressional intent except where offenses are called felonies or where common-law names are used and the common law left to interpret them, or where the State or common law has been expressly adopted or referred to. No other offenses, however we may think them graver than others, are felonies.

If this is not a satisfactory conclusion, it must be remembered that we are not to be expected to find a philosophical division of offenses simply because it is desirable to have one, and that what we find to be the law is of a piece with the irregular and incongruous mass of our criminal statutes. They do not constitute an organic

growth. They have been added to a little at a time with a view to meeting particular needs in legislation.

We maintain, therefore, that there is no ground for the supposition that the present statutory offense, originally declared to be a misdemeanor, was ever intended by Congress to become a felony.

Again: It could not have been intended, without absurdity, to make the present offense of combining to commit any offense a felony. The conspiracy to commit the most trifling *misdemeanor* would thus become a felony, a complete reversal of the common-law notion that the intent to do a wrong is less than the wrong and the intent together. In many cases of attempt to commit felonies the common law makes the attempt a misdemeanor, although the heinousness of an attempt is equal to that of the deed, whereas here we have only a mere design, coupled with any act preparatory, which might be followed by instant repentance. Succeeding Congresses have been wise in dealing with individual offenses, and in the difficult matter of challenges have laid down, perhaps, as good rules as were possible to human understandings. We can not, therefore, attribute so unwise an intent to them as this would be, unless we must do so.

But without further discussion of the question upon principle, the attention of the court is called to a few adjudicated cases which are believed to be decisive.

The act of March 3, 1825, entitled "An act to reduce into one the several acts establishing and regulating the Post-Office Department" (4 Stats., p. 102), in section 21, provides that "if any person employed in the Department

shall secrete, embezzle, or destroy any letter or package containing bank notes, etc., he shall be subject to imprisonment for not less than ten years nor exceeding twenty-one years."

Section 24 of the same act provides that every person who shall procure, and advise, or assist in doing any of the things made criminal by the act, shall be subject to like punishment.

Under this last-named section an indictment was found in the case of the *United States* vs. *Mills* (in North Carolina), and the case came up on certificate of division to the Supreme Court. It was objected that conviction against defendant could not be sustained, as it was claimed he was only an accessory, and no conviction of his principal was alleged or shown. This court held that the act was a misdemeanor, and, therefore, all were principals (7 Peters, 138). The same was held in *United States* vs. *Lancaster* (2 McLean, 431), the indictment being under section 21 of the same act, although the sentence was ten years. So in *United States* vs. *Coppersmith* (4 Fed. Rep., 198), upon a careful review of the whole subject, Judge Hammond held that the offense of uttering and passing counterfeit coin was not a felony, but a misdemeanor, within the Federal Statutes, and, therefore, the defendant was entitled to but three challenges.

A like conclusion was reached by Judge Dyer in *United States* vs. *Daubner* (17 Fed. Rep., 793), with reference to the offense of the making and presentation of false and fraudulent claims and affidavits against the United States. This decision also was made upon a careful consideration and review of the authorities.

It is true that in many of the States felony is defined to be an offense punishable by death or imprisonment in the State's prison; but this is by reason of State statutes. (*The People* vs. *War*, 20 Cal., 117; *Miller* vs. *The State*, 58 Georgia, 200; *Ingraham* vs. *State*, 7 Mo., 293; *Johnson* vs. *State*, 7 Mo., 183.)

It has been held that the trifling offense of petty larceny is still a felony in the absence of a statute prescribing a different rule, even though the punishment is very slight. (*Ward* vs. *The People*, 3 Hill, 395.) Conspiracy to commit a misdemeanor is only a misdemeanor. (4 A. and E. Encyc. Law, 592.)

But, as heretofore stated, it is believed that new statutory offenses, defined and punishment prescribed by acts of Congress, in the absence of specific provision to the contrary, are misdemeanors only. (*United States* vs. *Britton*, 107 U. S., 661; *Cannon* vs. *United States*, 116 U. S., 78.) See also *United States* vs. *Carroll* (32 Fed. Rep., 775)

II.

The second alleged error upon which emphasis is laid is in connection with the instruction of the court to disregard the question whether or not the plaintiffs in error had notice or knowledge of the restraining order of May 28, 1892. It is asked, how could plaintiffs violate or disobey an order they knew nothing about or conspire to disobey such order? In answer to this plausible argument we submit three propositions, viz:

1. This alleged ignorance was a proper matter of defense and excuse, if important at all. The record shows

that the supposed error took the form of a refusal to instruct, after the evidence was closed, that the failure of the plaintiff below to introduce evidence to show the knowledge of the accused was fatal (see p. 44). No evidence was excluded tending to show ignorance or failure to serve notice, and unless it was necessary for the plaintiff below to prove knowledge, nothing in the court's instruction could prejudice the accused or constitutes reversible error. The statutes on which the indictment was founded do not require an allegation of knowledge, and it is submitted that when acts violative of the restraining order, and impeding and obstructing justice, were proven to have been committed in consequence of a conspiracy, the law presumes that what was done was intended and the jury was bound to convict, in other words, that the *prima facie* case was complete. If the accused, shown to have done the forbidden things, had any defense or excuse, it was for them to produce it.

2. This alleged ignorance, if it existed, was an ignorance of law, and therefore no excuse. If a criminal statute is newly passed and it is demonstrably impossible for the accused to have known of it, the courts must enforce it against him nevertheless. Now, the restraining order was part of the due course of justice and its violation had been made a crime. All such orders had been incorporated into the criminal law, taken out of the mere controversies of parties, and declared to be of such a nature that it would be a crime for anyone whatever to impede or obstruct them. It was never intended that special notice of them should be served on every one; every one had notice to be on his guard against obstructing

their operation, and in the nature of things no other notice was possible. Now, this law must either be defeated because it is impossible to give notice of all the operations of the due course of justice and impossible to prove knowledge on the part of those who impede them, or, on the other hand, the usual rule in criminal jurisprudence must apply, that ignorance shall not be heard as an excuse. As a matter of fact, this is little, if any, more unjust than the enforcement of criminal law in general or civil law, for ignorance is almost universal as to law and legal rights.

3. The excuse of ignorance is for the escape of the innocent and unfortunate, not to open the trap for the guilty. These plaintiffs in error, using threats and violence and doing the acts for which they were indicted, do not say "We were innocently attending to our lawful business, and because we were ignorant of the restraining order disobeyed or went counter to it." Their acts were equally wicked as against the state and the natural rights of individuals and their intent was unlawful and wicked. It is a well-settled principle that he who sets out with such an intent and even unintentionally commits what would be a crime if intended shall be held guilty of that crime. His bad aim, resulting in mischief, shall make him responsible for the mischief because he intended mischief.

This is a rule of natural justice. It may be said these people intended mischief against individuals or the state, but not against the Federal Government, and hence the Federal court has nothing to do with that. On the contrary, this is precisely a case for the application of the principle. The intended mischief is not to be punished; it never was committed. There is no design to interfere

with other than Federal jurisdiction. Had the bad aim been against a foreign state, that would make no difference. The mischief has been done to the Federal Government, and it is the doing of that mischief which it is proposed to punish, neither more, nor less, nor other. Suppose A and B conspire in Kansas to murder C, and in pursuance of their conspiracy shoot at C near the line of the Fort Leavenworth reservation, and in so doing kill D, who is in the reservation, would they not be guilty of a conspiracy to kill D?

People whose conduct is an open defiance of all law and all authority are not in a position to escape the consequences of their violent and bloody course, however little the consequences were intended. If they did not know just what laws they were violating, it is manifest that neither did they care. They were like the man who makes himself intoxicated and then kills his fellow man, not knowing what he is about; or like the other who, being on a roof, throws into the street below a heavy beam which kills a passer-by, although he knew not that anyone was passing; or like thieves who post a watch to resist all comers, where the watch kills a man. One who does not care for consequences incurs the guilt of every consequence. (1 Bishop, Crim. Law, §§ 327, 329, *et seq.*, and 400.)

The indictment is for the offense described in section 5440, which says: "If two or more persons conspire either to commit any offense against the United States, * * * and one or more of such parties do any act to effect the object of the conspiracy." Section 5399 makes it an offense against the United States to by threats or force

obstruct or impede, or endeavor to obstruct or impede, the due administration of justice in the Federal courts; and the indictment in alleging the act done to effect the object of the conspiracy, alleges the actual commission of the offense as such act. This was going unnecessarily far, but the plaintiffs can not complain of that. Regarded as an indictment for conspiracy, coupled with acts to carry the conspiracy into effect, can we say that the indictment is sustained in the absence of proof of knowledge of the order, against the enforcement of which the acts and conspiracy are supposed to be directed? Can two persons "conspire to commit an offense against the United States" and act for the effecting of the object of the conspiracy, when they are conspiring for a wholly different object, do not know that the administration of justice in the Federal court will be impeded, and have no intention to impede it? Can men conspire to commit a thing and never have in their minds the thing to be committed? This is a natural question, and was doubtless asked in the court below.

It does not seem to be difficult to answer. The evil intent which the law looks for in accused persons is not an intent to violate the law, but to do things which are and constitute violations of the law. This will be recognized at once in the case of individuals. A man intends to take what does not belong to him, or to kill another with the object of getting his money, or shoots at one man and intends to kill him, but kills another. His mind is not on the law in the former cases, nor on the object hit in the latter case. It is not presumed that he intended to violate any law, but it is presumed that he knew the law and, however he may have regretted acting in a way forbidden

by it, pursued his object with that knowledge in his mind. This is the supposition in the former cases; and in the latter it is presumed that he did know what he did not know in fact, namely, that the person hit was there; and it is also presumed, contrary to the fact, that he intended to hit him. But if this is so as to an individual and he is estopped by what he does from saying he did not know and did not intend, wherein lies the difference in the case of conspiring to do and performing acts to effect the object?

The individual makes up his mind to shoot B, and hunts for B and shoots A. If there was a conspiracy to shoot B and one of the conspirators hunted for B and shot A, are not all guilty? Granted, that there *may* be a difference between the case of an individual and that of a conspiracy, as where the conspiracy is to do one thing and the member of it is not acting in accordance with the agreement, but does something not connected with the common purpose. But in the present case the conspiracy was to do certain acts for the purposes of the conspiracy, and in the carrying out of those purposes acts were done accordingly, and wherein lies the difference between this and an individual's case, who should form a purpose to do these same things, and in pursuance of his design go and do them? Will you close the mouth of the individual and forbid him to say he did not know this, and he did not intend that, and let the two persons say, we did not intend to combine for this purpose, and we did not know such and such a fact? Is it more impossible to agree together to do an unlawful thing without actually thinking of it, than to design or intend to do the same

thing without actually thinking of it? Unquestionably not. Neither, then, is there any more difficulty in attributing knowledge and intent to the combination than to the individual where the ends of justice require it.

Two or more men did unlawfully and wickedly combine to do certain things for their common and unlawful purpose, and by them, or some of them, unlawful acts were accordingly and for such purpose done; and it turns out that this combining and these acts were all for a purpose, the accomplishment of which would, as it did, impede and obstruct the due administration of justice in a federal court. Shall it be said that the *intention* was different for this combining and acting, and that it was *without knowledge* that the parties agreed to and proceeded to do acts in obstruction of justice? Or does the wickedness and unlawfulness of the combining and the purpose and the acts estop the parties who have *combined to do things and accomplish purposes in obstruction of justice* from saying that they did not know and did not intend?

Of course, under our first and second propositions, the intervention of the restraining order and the continuance of the conspiracy and its persistence in the same purposes, with *presumed* knowledge of the order, would make this a conspiracy to obstruct and impede justice, because it would be one to do things *knowing them to be in obstruction of justice.* Presumed knowledge and actual knowledge are in law the same. That the object to be accomplished was not to impede justice, but to carry out some laborers' scheme would not alter the case in the least. We are not making a fictitious conspiracy; the conspiracy was actual. We are

not making fictitious acts; the acts relied on are those actually committed. We are not deriving acts from the conspiracy; they are actually done in pursuance of it. We are not making a fictitious obstruction of justice, nor fictitiously attributing this obstruction to the acts and the conspiracy; it comes actually, naturally, and as an inevitable consequence from them. We are not substituting a new and fictitious purpose to the conspiracy or the acts.

The conspiracy, the purpose, the acts were all equally aimed at that which was the obstruction of justice; they were each and all wicked and unlawful, and we say that where such a course of proceeding is found, ignorance that it was a proceeding in obstruction of justice can not be allowed as a defense, but an intent to proceed in obstruction of justice is supplied by a fiction of law. The fiction is a necessary and a just one. It does not punish the innocent, but prevents the escape of the guilty.

In the case of *Coy* (127 U. S., 731), this court have considered the section 5440 of the Revised Statutes here in question, and say:

> The main objection to the indictments, however, which is urged with great earnestness by counsel for appellants, is that it contains no averment that the intent and purpose of the defendant's conduct was to affect in any manner the election of a member of Congress, or to influence the returns relating to that office. The proposition is put in various forms that since there were many State and local officers also voted for at the election in question and in those precincts, and as it is consistent with the indictment that the actions of the conspirators were directed only to

the election of those persons, and not to that for the Federal office of a Congressional representative, the indictment is for that reason insufficient.

The charge is that the conspirators unlawfully and feloniously induced the election officers to omit to perform their duty in this respect, which is in general conceded to be expressive of evil intent. But counsel demand something more than this general evil intent in tampering with the poll lists, tally papers, and certificates, although it is not denied that the object of the parties accused, in inducing the election officers to violate their duty, proceeded from a criminal intent, or that it was done for the purpose of affecting the returns contained in the papers that were withheld, or exposing them to the danger of mutilation and alteration. It is said, however, that since the evil intent is not shown to have been specifically aimed at the returns of the vote for Congressmen, the statutes of the United States can have no force, and it is asserted that Congress had no power to provide for any punishment where no intent affecting the Congressional election is averred.

It would be a very singular principle to establish, that where a man was charged with a homicide, caused by maliciously shooting into a crowd with the purpose of killing some person against whom he bore malice, but with no intent to injure or kill the individual who was actually struck by the shot, he should be held excused, because he did not intend to kill that particular person, and had no malice against him. The analogy of this example to the present case is close.

The logic of this argument goes to the full length of this case. See also *In re Doolittle,* 23 Fed. R., case and note.

III.

As to the error assigned that several trials were refused the plaintiffs in error, this refusal is fully sustained by the decision in the case of *United States* vs. *Marchant* (12 Wheat., 480).

The other allegations of error seem to require no particular discussion; some because covered by what has already been said herein; some as forestalled or done away by the charge of the lower court, and the rest because the law concerning them is already too well settled to admit of argument.

It is submitted to the court whether the questions sought to be raised here are all of them properly raised within the principle laid down in *Fishburn* vs. *Chicago, Milwaukee and St. Paul Railway Company* (137 U. S., 60.)

Respectfully submitted.

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